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**Drafting WTO-Compliant Copyright,
Geographical Indications, and Integrated Circuits Legislation**

Final Report

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A. Overview

The objective of my consultancy was to assist the Government of Jordan (GOJ) in bringing its legal regime concerning copyright, integrated circuits, and geographical indications into conformity with the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). In addition, I provided comments and feedback to the GOJ on draft industrial design and trademark legislation, responded to questions concerning patent protection, and spoke at a briefing session/seminar on copyright and integrated circuit protection. While the Jordanian draft laws still contain a few problems of conformity with TRIPs requirements, particularly in respect of enforcement of intellectual property rights, they have overcome most hurdles and in almost all cases fully respect the spirit of the TRIPs agreement.

The major impediment concerning enforcement requirements under TRIPs stems from the fact that, as a Civil Law country, the source of remedies under Jordanian law is exclusively the Civil Code. While the draft intellectual property laws contain provisions on remedies not expressly found in the Civil Code, such as provisional measures or seizure, provisions on damages or other general remedies are absent. From the perspective of someone trained in the Common Law, these gaps may be viewed as significant problems of transparency contrary to the basic principles of TRIPs. However, as TRIPs Article 1(1) provides that, "Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice," Jordanian reliance on the Civil Code as the source of remedies and other enforcement measures must be deemed acceptable.

Some specific problems of TRIPs conformity remain, however. For example, although TRIPs Article 45(2) requires the courts to have the authority to order an infringer to pay costs, including attorney's fees, this requirement is not clearly provided for in the Code or in any draft intellectual property law. Similarly, the payment of compensation, including expenses, for abuse of enforcement measures as required by TRIPs Article 48(1) does not appear to be sufficiently covered. Nevertheless, as long as the Civil Code is given the broad interpretation it is apparently intended to have, such gaps in conformity remain the exception rather than the rule.

On a personal level, this consultancy has proved to be a particularly gratifying experience. I feel privileged to have worked with outstanding colleagues in the Ministry of Industry and Trade, at International Business Legal Associates, and at AMIR whose intelligence and dedication made my work that much easier. At the Ministry, my thanks, in particular, go to Mohammed Khreisat, Director of the Industrial Property Office, and Samer Al-Tarawneh, my counterpart in the WTO Unit. At International Business Legal Associates, they go especially to three outstanding attorneys, Salah Al Bashir, Yasera Ghosheh, and Maher Hamden. And at AMIR, my gratitude goes particularly to Farhat Farhat, the WTO Component Leader, as well as to Nadia Abu Hishmeh and Abed Shamlawi, both of whom graciously ensured that all my office and computer needs were met. I also wish to thank Polly Maier, the IPR consultant who prepared the draft texts and commentaries that served as the ideal foundation for my work.

The remainder of this report contains brief comments on the draft Copyright, Integrated Circuits, and Geographical Indications legislation as well as on the need for future action.

B. Copyright

The Jordanian Copyright Protection Law dates from 1992. It was amended in 1998 in a first attempt to achieve compliance with TRIPs requirements. Because the law had so recently been amended, there was great reluctance (understandably) on the part of the GOJ to introduce new wholesale changes in the law. As a result, our² effort focused on how to achieve TRIPs conformity with the fewest proposals for change. Much of our discussion centered on the question of whether or not a particular amendment was absolutely essential, and frequent reference was made to the TRIPs provision that “Members...shall not be obliged to...implement in their domestic law more extensive protection than is required by this Agreement” (Article 1(1)). As long as a provision could reasonably be interpreted as falling within the TRIPs ambit, the provision remained unchanged.

Two additional factors complicated the copyright review process. The first concerned comments, entitled “Analysis of Deficiencies/Ambiguities in Jordan’s Amended Copyright Law,” prepared by the International Intellectual Property Alliance (IIPA). These comments needed to be considered and addressed in addition to the comments and proposals for amendment prepared by Polly Maier. Unlike Ms. Maier’s easily understandable and well-reasoned comments, the IIPA’s contribution was imprecise, unclear, unduly aggressive in tone, and sought changes that exceeded the scope of TRIPs. As a result, my Jordanian counterparts were frequently confused as to what the IIPA was seeking and felt almost under attack. They responded with justifiable defensiveness. I became the IIPA “interpreter” but also was sometimes unsure whether I was giving an IIPA comment its proper meaning. Had the IIPA taken greater care in preparing and compiling its comments and, equally important, had it adopted a more conciliatory tone, I believe our review process would have been improved.

The second factor concerned timing. While it is most frequently the case that national legislatures are slow to act, in the case of the Amendments to the Copyright Protection Law, the Jordanian Parliament (at least the Lower House) moved with all deliberate speed. As a result, the amendments were passed without a final opportunity for review.³

Despite the above constraints, the amended Copyright Protection Law is a significant improvement over its former versions. Its changes include the following:

- A more precise definition of computer software;

² I regularly met with Samer Al-Tarawneh, Yasera Ghosheh, and Maher Hamden. Most frequently, we all met as a group. Once we had achieved consensus on the needed changes, the proposals were reviewed by Mohammed Khreisat and [Ali Qubbah, Director of the National Library Department].

³ I left Jordan on July 30. Just before I returned on August 17, the Lower House passed the draft law.

- Provisions on licenses for translation and reproduction⁴ more in accord with the Berne Convention Appendix;
- Improved fair use provisions;
- Modified provisions on the rights of broadcasting organizations;
- An additional safeguard placed on copying by libraries and documentation centres;
- Expanded droit de suite provisions;
- Clarified provisions on calculating the protection periods for copyrighted works;
- Improved protection for photographic works;
- Enhanced provisional measures;
- Strengthened provisions on destruction of infringing copies;
- More precise scope of application provisions.

An English translation⁵ of the Amendments to the Copyright Protection Law, together with translations of the 1992 Law and 1998 Amendments, are provided in Annexes 2, 3, and 4 to this report.⁶

It is highly likely that the amended Copyright Protection Law will give rise to questions during the WTO review process. It is also likely that the GOJ will be able to provide sufficient answers to most, if not all, of the questions. In at least one case, however, successful compliance with TRIPs will depend upon the promulgation of a clarifying regulation, and in another, it will depend upon the enactment of additional provisions in the Customs Law. Annex 5 to this report contains a memorandum (signed also by Salah Al Bashir and Maher Hamden) that responds both to comments on the proposed Amendments by Polly Maier and to the comments by IIPA that were not addressed in those amendments.⁷ The questions that will emerge from the WTO review process will probably reflect some of the comments discussed in the memo.

The provision that requires clarification in a regulation concerns the scope of applicability of neighboring rights under Article 53(C) of the amended Law (or Article 14 of the Proposed Amendments). While we recognized that the overly simple solution provided in amended Article 53(C) was inadequate, the alternative of incorporating an extremely long and complex provision into the Act was considered unacceptable. I have prepared a draft regulation based on Polly Maier's initial proposed amendment and the point of attachment provisions of the Rome Convention, which are attached to this report as Annex 6.

TRIPs requires the enactment of special provisions on "border measures" to prevent the importation of pirated copyright and counterfeit trademark goods. In order to comply with TRIPs, the GOJ will have to enact conforming measures in its

⁴ The basis for discussion of those provisions was a draft that I prepared containing alternative versions of acceptable licensing language. The text of those versions is in Annex 1 to this report.

⁵ All English translations of the draft legislation were prepared by International Business Legal Associates. The firm was also responsible for preparing Arabic translations of the texts I prepared.

⁶ Please note that many of the texts included in the annexes to this report contain my hand-scribbled comments. In addition, due to a software "glitch" in the International Business Legal Associates' offices, legal provisions that should be labeled paragraph "A", "B", "C"... emerge from the computer labeled "1st", "2nd", "3rd",....

⁷ This memorandum also contains lengthy comments on the draft Trademark Law.

Customs Law. Although the drafting of those provisions is outside the scope of my work, I prepared, at the request of my Jordanian colleagues, a summary of the TRIPs requirements, which is attached to this report as Annex 7.

Once the amended copyright legislation enters into force, great attention will have to be paid to ensuring enforcement and proper administration of the law as well as to cultivating a general culture of respect for copyright (see “Future Action,” below).

C. Integrated Circuit Protection

TRIPs requires every WTO Member to ensure protection for the layout-designs (topographies) of integrated circuits in conformity with the TRIPs Agreement and certain provisions of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits. Jordan has had no legislation on integrated circuit protection, so the task was to create a text that would be relevant to, and understandable by, the GOJ and interested Jordanian citizens.

Integrated circuit protection is an extremely arcane subject even by US legal standards, so it was totally understandable that my Jordanian colleagues would have had no experience with the subject. My first objective, therefore, was to provide a basis of understanding of the history of, and reasons for, the grant of protection, as well as an awareness of what integrated circuits and layout-designs are. Abed Shamlawi was gracious enough to supply a collection of chips and microprocessors for my colleagues to examine. Photos downloaded from the National Semiconductor Press Room Photograph Gallery website, attached to this report as Annex 8, and U.S. Copyright Office information on mask work protection (the U.S. term for layout-design), attached as Annex 9, also proved helpful. In the end, my colleagues⁸ demonstrated that they were able and quick learners.

We grounded our legal discussions on the excellent and very comprehensive draft law prepared by Polly Maier. It was soon apparent, however, that the draft needed to be streamlined and slimmed down, without violating the basic requirements of TRIPs, in order to be comprehensible to the GOJ. On the basis of our discussions, I prepared a list of proposed changes to the draft law, attached to this report as Annex 10, as well as a new draft, attached as Annex 11. Those documents then served as the basis for further discussions, which in turn led to my preparing a revised draft law, attached as Annex 12. Once we agreed upon the terms of the revised draft, Samer Al-Tarawneh, our legal draftsman, produced a version suitable for submission to the Cabinet and Legislative Bureau, which we again scrutinized and changed slightly. The final version of the draft law is attached to this report as Annex 13.⁹

In my opinion, the draft law meets the minimum requirements of TRIPs. At the wish of the GOJ, it opts for a system of protection for layout-designs based on registration, and grants protection to original layout-designs if an application for registration has been submitted within two years of first commercial exploitation anywhere in the world. The draft adopts the Washington Treaty’s definitions of integrated circuit and layout-design, and echoes the grant of exclusive rights and

⁸ Once again, Mohammed Khreisat, Samer Al-Tarawneh, Yasera Ghosheh, and Maher Hamden.

⁹ There was some question as to the proper English translation of the law, and two translations were prepared. My comments on the English translation are attached as Annex 14.

permissible exceptions contained in TRIPs and the Washington Treaty. In addition, while the law requires the Registrar to carry out a formal examination of an application for registration, it wisely places no obligation on the Registrar to carry out a substantive examination. The end result is a law that follows closely the terms of TRIPs and the Washington Treaty and is appropriate to Jordan.

There are nevertheless two areas where questions might arise with respect to WTO compliance. The first concerns the question of enforcement, a problem that will most likely plague all the draft intellectual property laws. The second concerns the draft law's provisions on the grant of obligatory licenses. While the draft law adheres strictly to the provisions of TRIPs Article 31, and therefore is arguably compliant, it fails to take into consideration the particular circumstances of integrated circuits.¹⁰ If problems do arise with respect to this aspect of the law, they will, I believe, be remediable with regulations.

The draft law includes several provisions that require regulations (or by-laws). Midway through our discussions on the draft law, I prepared sample draft regulations for some of those provisions. The text of those regulations is attached to this report as Annex 16.

It is not surprising that there is almost no understanding of integrated circuit protection in Jordan (or any country) at this point in time. Disseminating information about the new law will therefore be an important follow-up activity.

D. Geographical Indications

TRIPs contains provisions obliging WTO Members to protect geographical indications, including geographical indications for wines and spirits. Our discussions on ensuring Jordanian protection for geographical indications in conformity with TRIPs focused largely on two questions:

- Should Jordanian protection of geographical indications be embodied in separate legislation or should the relevant provisions be incorporated in another intellectual property law? and
- Should the Jordanian legislation make specific reference to the term “wines and spirits”?

With respect to the first question, the most common answer proved not to be workable for Jordan. In most countries, provisions on geographical indications are included as part of the nation's trademark legislation. However, because the Jordanian draft trademark law amendments, which were advancing swiftly in the legislative process, did not include geographical indications, the GOJ was hesitant to interrupt the process by adding them. The decision not to incorporate geographical indication protection in the trademark law left two alternatives: to include the provisions in another intellectual property law; or to create a law limited exclusively to geographical indication protection. From the perspective of TRIPs compliance,

¹⁰ As part of our discussions on this issue, I prepared a draft provision on obligatory licensing that attempted to balance the requirements of TRIPs with the needs of integrated circuit protection. That draft, which I concede is probably no better than the provisions of the draft law, is attached in Annex 15.

either alternative would be acceptable as long as the resulting legislation was transparent.

Initially the GOJ favored the creation of legislation that would combine provisions on unfair competition, trade secrets, and geographical indications. After further discussion, however, it was decided that geographical indication protection should be the subject of its own (albeit very short) law. This decision was based partly on expediency – a draft geographical indications law could quickly be ready for submission to the Cabinet – and partly on logic – combining the three subjects would result in awkward legislation.

The second question led to a more direct answer. The notion of expressly mentioning terms like “wines and spirits” in the legislation of Jordan, an Islamic country, was deemed unacceptable. As a result, specific provisions focusing exclusively on wines and spirits have been left out of the draft legislation. Instead, those provisions have been generalized to apply not only to geographical indications for wines and spirits, but to all geographical indications. Additionally, the draft legislation has not taken advantage of any of the permissible limitations on protection for geographical indications for wines and spirits, and consistently uses the term “good or product” (instead of merely one or the other) to ensure that the intent of the legislation is to cover all goods and products, including wines and spirits.

One provision on wines has not been covered in the draft law, however. TRIPs Article 23(3) deals with “homonymous geographical indications for wines” and requires Members to “determine the practical conditions under which the homonymous indications in question will be differentiated from each other....” While the failure to include such a determination violates TRIPs, the problem can easily be rectified, if necessary, in a regulation.

Our¹¹ discussions were again based on comprehensive provisions prepared by Polly Maier. Ms. Maier’s draft called for the creation of a system of registration for geographical indications and added other provisions that, although desirable, also exceeded the scope of TRIPs. In view of the GOJ’s wish to provide protection that met TRIPs requirements but went little further, I prepared a pared-down set of provisions, which follow closely the requirements of TRIPs and the Paris Convention and are attached to this report as Annex 17. As a result of further discussions, I prepared a revised draft¹², attached as Annex 18. That draft, with several modifications, will serve as the basis of the Draft Law on the Protection of Geographical Indications, currently being finalized by Samer Al-Tarawneh.

The draft law will differ from my draft provisions in two primary respects. First, it will be completed with provisions on provisional measures and seizure¹³ as well as the other necessary “boilerplate” provisions. Second, the provision prohibiting the use of a geographical indication that constitutes an act of unfair competition (Article 2(B) of the revised draft provisions) will be further shortened. My draft, which reflects Article 10*bis* of the Paris Convention, includes the examples of acts of unfair

¹¹ See footnote 7, *supra*.

¹² Among other things, this draft deleted the express provisions on wines and spirits.

¹³ As is the case with the other draft laws, these provisions will not include all the enforcement measures necessary under the TRIPs Agreement.

competition mentioned in Article 10*bis*. Since it is not essential to mention these examples expressly, and since the examples will probably be included in the Unfair Competition Law, they will be deleted from the draft geographical indications law. The essence of the provision will remain untouched, however.

If Samer Al-Tarawneh is able to complete his work and an English translation is prepared before I leave, I will review and comment on the draft law. In the event the draft is not available for review before I leave Jordan, I will be available to review it on short notice following my return to the U.S.

E. Other Activities

In addition to the activities that constituted my immediate scope of work, I briefly discussed and prepared comments on the draft Industrial Designs and Models Law, attached to this report as Annex 19, briefly reviewed the draft trademark law amendments, and responded to queries concerning the patent law amendments. I also spoke at a workshop/panel discussion on copyright and integrated circuit protection. A set of my overhead transparencies for that talk, which were provided to the participants as a handout, is attached as Annex 20.

F. Future Action

Future action, in my opinion, is most essential in two areas. The first, and most immediate, is the drafting and promulgation of regulations to complete the new intellectual property legislation. The second is training and enforcement.

If the new Jordanian intellectual property laws are to have any impact on the country, they will need to be enforced and the Jordanian citizenry will need to accept them as legitimate and beneficial. Training and education will therefore be essential. Moreover, in order to be effective, the training and education will have to be broadbased. It will not be enough to limit training to government officials responsible for administering and enforcing the laws;¹⁴ librarians, educators, students, shopkeepers, and all others affected by the laws will have to be made aware of their provisions. As a result, training will need to be accompanied by strong public relations campaigns, the development of intellectual property curricula in the schools, and other measures that create a national culture of respect for intellectual property rights.

Coordination and inclusion of all interested parties and organizations will be crucial to the success of the training and education efforts. Jordan is fortunate to have several organizations already in place that are capable of playing an important role in education and enforcement measures. Tapping the potential of these organizations should constitute an important component of all future activities.

¹⁴ Including officials in the Department of Industrial Property and National Library Department, police, prosecutors, and judges.

Finally, I remain available to assist the GOJ and AMIR in ensuring that the Jordanian intellectual property regime not only conforms to the requirements of TRIPs, but also serves to bring about a bright and prosperous future for Jordan.

Annexes follow.

ANNEX 1

Possible Drafting Language for Article 11

ALTERNATIVE 1

Article 11.

Notwithstanding the provisions of Article 9 of this law:

- A.** If, after the expiration of three years from the date of the first publication of any printed foreign work, a translation of that work has not been published in Arabic by the owner of the right of translation, or with his authorization, or if all the editions of a published Arabic translation are out of print, any Jordanian citizen may obtain from the Minister a non-exclusive, non-transferable license to translate that work into Arabic, and to publish the translation in printed or analogous forms.
- B.** If, after the expiration of three years from the date of the first publication of any printed work relating to technology, natural or physical sciences, or mathematics, after the expiration of seven years from the date of the first publication of any printed work or poetry, drama, music, art, or fiction, or after the expiration of five years from the date of the first publication of other types of printed works, copies of such works have not been distributed in the Kingdom to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the Kingdom for comparable works, any Jordanian citizen may obtain from the Minister a non-exclusive, non-transferable license to reproduce and publish such work at that or a lower price.
- C.** The license for translation provided for in paragraph (A) of this Article shall be granted only for the purpose of teaching, scholarship or research. The license for reproduction provided for in paragraph (B) of this Article shall be granted only for use in connection with systematic instructional activities.
- D.** Where a license for translation or reproduction is issued, the author of the original work which has been translated or reproduced shall be entitled to receive from the applicant just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the Kingdom and the author's country.
- E.** With the exception of Articles II(9) and III(7)(b), the provisions of Articles II, III, and IV of the Appendix to the Berne Convention for the Protection of Literary and Artistic Works, to which the Kingdom is party, shall apply *mutatis mutandis* to the provisions of this Article and shall have the status of national law.

ALTERNATIVE 2

Article 11.

Notwithstanding the provisions of Article 9 of this law:

- A. If, after the expiration of three years from the date of the first publication of any printed foreign work, a translation of that work has not been published in Arabic by the owner of the right of translation, or with his authorization, or if all the editions of a published Arabic translation are out of print, any Jordanian citizen may obtain from the Minister a non-exclusive, non-transferable license to translate that work into Arabic, and to publish the translation in printed or analogous forms.
- B. If, after the expiration of three years from the date of the first publication of any printed work relating to technology, natural or physical sciences, or mathematics, after the expiration of seven years from the date of the first publication of any printed work or poetry, drama, music, art, or fiction, or after the expiration of five years from the date of the first publication of other types of printed works, copies of such works have not been distributed in the Kingdom to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorization, at a price reasonably related to that normally charged in the Kingdom for comparable works, any Jordanian citizen may obtain from the Minister a non-exclusive, non-transferable license to reproduce and publish such work at that or a lower price.
- C. The license for translation provided for in paragraph (A) of this Article shall be granted only for the purpose of teaching, scholarship or research. The license for reproduction provided for in paragraph (B) of this Article shall be granted only for use in connection with systematic instructional activities.
- D. Where a license for translation or reproduction is issued, the author of the original work which has been translated or reproduced shall be entitled to receive from the applicant just compensation that is consistent with standards of royalties normally operating on licenses freely negotiated between persons in the Kingdom and the author's country.
- E. Notwithstanding the provisions of paragraphs (A) and (B), above, no license to translate a work obtainable after three years, and no license to reproduce or publish an edition of a work obtainable after three years, shall be granted until a further period of six months has elapsed either from the date on which the applicant complies with the requirements of paragraph (K), below, or, where the identity or the address of the owner of the right of translation or the right of reproduction is unknown, from the date on which the applicant sends a copy of his application for a license to the Minister as provided for in paragraph (L), below. Where licenses to reproduce or publish an edition are obtainable after other periods and paragraph (L) is applicable, no license shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application as provided in paragraph (L).

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- F.** If, during the periods of six months or three months as mentioned in paragraph (E), above, an Arabic translation is published by the owner of the right of translation, or with his authorization, or copies of an edition are distributed to the general public or in connection with systematic instructional activities by the owner of the right of reproduction, or with his authorization, at a price reasonably related to that normally charged in the country for comparable works, no license shall be granted.
- G.** No license shall be granted under paragraph (A), above, when the author has withdrawn from circulation all copies of his work, or under paragraph (B), above, when the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the license has been applied for.
- H.** If an Arabic translation of a work is published by the owner of the right of translation, or with his authorization, or if copies of an edition of a work are distributed in the Kingdom to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction, or with his authorization, at a price reasonably related to that normally charged in the Kingdom for comparable works, any license granted shall terminate, provided the translation contains substantially the same content as the translation published under the license, or the edition is in the same language and with substantially the same content as the edition which was published under the license. Any copies already made before the license terminates may continue to be distributed until their stock is exhausted.
- I.** For works that are composed mainly of illustrations, a license to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of both paragraphs (A) and (B), above, are fulfilled. A license to reproduce and publish a translation of a work shall not be granted where the translation was not published by the owner of the right of translation, or with his authorization, or where the translation is not in Arabic.
- J.** Notwithstanding the provisions of paragraph (B), above, a license to reproduce and publish an edition of a work may also be granted if, after the expiration of the applicable period as provided in paragraph (B), a period of six months has expired during which time no authorized copies of the edition have been on sale in the Kingdom to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.
- K.** A license may only be granted under paragraphs (A) or (B), above, if the applicant establishes either that he has requested, and has been denied, authorization by the owner of the right to make and publish the translation or to reproduce and publish the edition, or that, after due diligence, he was unable to find the owner of the right.
- L.** If the owner of the right cannot be found, the applicant for a license shall send, by registered airmail, [a copy] [copies] of the application that he submitted to the Minister to the publisher whose name appears on the work [and to any national or international information center which may have been designated, in a notification

to that effect deposited with the Director General of the World Intellectual property Organization, by the Government of the country in which the publisher is believed to have his principal place of business].

- M.** The name of the author shall be indicated on all copies of the translation or reproduction published under a license granted in accordance with this Article. The title of the work and, in the case of a translation, the original title of the work, shall appear on all such copies.
- N.** No license granted under this Article shall extend to the export of copies, and any such license shall be valid only for publication of the translation or reproduction in the territory of the Kingdom. All copies published by virtue of a license under this Article shall bear a notice in Arabic stating that the copies are available for distribution only in the Kingdom.
- O.** [Where a governmental or other public entity of Jordan which has granted a license to make a translation into Arabic in accordance with paragraph (A), above, sends copies of the translation published under the license to another country, such sending of copies shall not, for the purposes of this provision, be considered to constitute an export under paragraph (N), above, provided: (i) the recipients are individuals who are nationals of Jordan, or organizations grouping such individuals, (ii) the copies are to be used only for the purpose of teaching, scholarship, or research, (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose, and (iv) the country to which the copies have been sent has agreed with Jordan to allow the receipt, distribution, or both, and the Director General of the World Intellectual Property Organization has been notified of the agreement by the Kingdom.] Is this provision necessary????

ANNEX 2

Proposed Amendments to The Copyright Protection Law No. () For The Year (1999)

ARTICLE (1)

This Law shall be called " The Law Amending Copyright Protection Law No. () for the year (1999), and shall be read in conjunction with the law No. (22) for the year (1992) and its amendments , referred to hereinafter as the Original Law as one law. It shall come into force as of the date of its publication in the official Gazette.

ARTICLE (2)

Item (8) of paragraph (B) of Article (3) of the Original Law shall be Cancelled and replaced with the following text ..

" 8) Computer software, whether in source or object code ".

ARTICLE (3)

Article (11) of the Original Law shall be cancelled and replaced by :

" Notwithstanding the provisions of Article (9) of this Law :-

- A. If, after the expiration of three years from the date of the first publication of any printed foreign work, a translation of that work has not been published in Arabic in Jordan by the owner of the right of translation, or with his authorization, or if all the editions of a published Arabic translation are out of print, any Jordanian Citizen may obtain from the Minister a non-exclusive, non-transferable license to translate that work into Arabic, and to publish the translation in printed or any other form.
- B. Any Jordanian Citizen may obtain from the Minister a non-exclusive, non-transferable license to re-produce and publish any of the following printed works, according to the following conditions :
 - 1) The passing of the expiration of three years from the date of the first publication of any printed work relating to technology, natural or physical sciences or mathematics, or seven years from the date of the first publication of any printed work of poetry, drama, music, art or fiction, or of five years from the date of the first publication of other printed works.
 - 2) Copies of such works have not been distributed in the Kingdom to meet, public demand or in connection with educational purposes, needs of schools and universities, by the owner of the right of reproduction or with his authorization at a reasonable price for comparable works.

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- 3) The reproduced copy according to this Article is sold at a price equal to or less than what is provided in paragraph (B).
- C. The license for translation provided in paragraph (1) of this Article: shall be granted only for educational purposes at school or university level and for purposes of research, while the license for regulation provided in Paragraph (2) of this Article, shall be granted only for the educational purposes of schools and universities.
- D. Where a licenses for translation or re-production is issued, the author of the original work which has been translated or re produced shall be entitled to receive the compensation that is consistent with the standard royalties normally applicable to licenses freely, negotiated between persons in the Kingdom and the author's country.
- E. Conditions and procedures for granting licenses provided in this Article shall be stipulated in a Regulations issued for this purpose..

ARTICLE (4)

Paragraph (A) and (B) of Article (17) of the Original Law shall be cancelled And replaced by :-

- A. Presenting, displaying, reciting, acting or putting the work of art into rhythm, if it occurs in a private family gathering or at, educational, cultural or social institution for illustration for educational purposes, and playing musical works by musical bands of the government, provided that these do not yield any financial returns and that the source and name of the author is cited if known .
- B. Making use of the work for private personal use, through making one copy of the work by reproducing recording, photocopying, translating or musical re-arranging, on condition that this does not conflict with the usual use of the work, and does not cause unreasonable damage for the legal rights of the right holder.

ARTICLE (5)

Article (20) shall be amended by adding the following phrase : "And does not conflict with the usual use of the work ".

ARTICLE (6)

Article (23) of the Original Law shall be amended as follows :

First: By canceling Item (2) of paragraph (A) and replacing it by the following provision : " The official Radio and Television establishments or the Right holder have the right to prevent third parties from fixing unfixed broadcast programs or reproducing any fixation of such programs, or broadcasting the same to the public by wireless means or by television without obtaining a permission from the concerned establishment or the right holder as the case maybe.

Second : Paragraph (B) of the same Article shall be cancelled and replaced with the following provision : "The producers of phonograms or their successors in title and anyone who has any legal right hold in phonograms, shall have the right to authorize or to prevent the direct or indirect reproduction of their audio recording and the commercial rental to the public of originals or copies of the same for commercial purposes.

ARTICLE (7)

Article (17) of the Original Law shall be amended by adding the following phrase at the end of it :

" On condition that the publishing or republishing shall be for the public benefit ."

ARTICLE (8)

Article (29) of the Original Law shall be amended by canceling the following phrase (The original musical manuscript) and replacing it by : (the original musical or literary manuscript or his [rightholder's] heirs) .

ARTICLE (9)

Article (30) of Original Law shall be amended by adding the following phrase :

"And for the purposes of calculating the period of protection the date of death shall be deemed to begin on the first of January of the Calendar Gregorian Year following the death of the author."

ARTICLE (10)

Article (31) of the Original Law shall be amended by canceling its introduction and paragraph (A) thereof, and replacing it by :

"The protection period for the following works of art shall be valid for fifty years as of the date of authorized publication, provided the term of protection shall be deemed to begin from January 1st of the Gregorian Calendar Year following the date of publication:

(A) Cinematographic and television works. However, where such works are not published with authorization within fifty years of their creation, the term of protection shall run from the date of the making of the work, and shall be deemed to begin on the first of January of the calendar Gregorian year following the creation.

ARTICLE (11)

Article (32) of the Original Law shall be cancelled and replaced by :- .

"The protection period for the following works of art shall be valid for twenty five years as of the date of the completion thereof. The term of protection shall run from the date of completion, but shall be deemed to begin on the first of January of the calendar Gregorian year following such completion :

- A. Photographic works
- B. Works of applied arts.

ARTICLE (12)

Article (46) of the Original Law shall be canceled and replaced by :-"

- A. The court may, upon a petition filed by a right holder, or any heirs thereof, or successors in title, take any of the following measures, with respect to any work in which the copyright or any of the rights mentioned in Article (23) of this Law

which have been infringed upon , provided that the petition contains a detailed and comprehensive description of the work :

1. An injunction ordering a party to desist from infringement of a work or any part thereof : .
 2. Seizure of an original work, its copies or photocopies, as well as the materials used in re-publication, (provided that they are not useful otherwise).
 3. Impoundment of revenues derived from exploiting a work which has been published through public performance.
- B. The petition may be filed before, upon or after the initiation of the lawsuit.
- C. Upon a showing that the applicant is the right holder and that his rights are being infringed or that such infringement is imminent, the Court may order any of the measures provided for in Paragraph (A) of this Article on a provisional basis to prevent an infringement from occurring., or to preserve relevant evidence in regard to a claimed infringement..
- D. In cases where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed, the Court may order any of the measures provided for in Paragraph (A) of this Article on a provisional basis without notifying the defendant, or in the absence thereof . The affected parties shall be notified of the measures ordered by the Court immediately after the execution of the order. The defendant shall have the right to request a hearing within a reasonable period after the notification. At the hearing, the Court shall decide whether the provisional measures shall be modified, revoked or confirmed.
- E. A request for provisional measures under Paragraph G or D of this Article shall be filed together with a security deposit sufficient to prevent abuse and to guarantee against any loss or damage sustained by the defendant if it proves that the applicant is not justified in his claim.
- F. If this Court orders provisional measures on the basis of paragraph C or D of this Articles before the initiation of the lawsuit, the applicant must file his lawsuit within eight days of the date of the Court's decision, If the lawsuit was not filed during his period, the measures taken by the Court may be revoked upon the defendant's request.
- G. Where the provisional measures under Paragraph C or D of this Article are revoked due to passing the period of filing a Law suit or due of lapse to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement, the Court may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
- H. The Court may order an applicant who procured any measures under this Article through an abuse of enforcement procedures to pay a compensation for the damages to a party of such abuse. The Court may also order the applicant to pay the defendant expenses, which may include attorney's fees.

ARTICLE (13)

Paragraph (A) of Article (47) of the Original Law shall be amended by canceling the phrase : " provided they are not useful for anything else".

ARTICLE (14)

Article (53) of the Original Law shall be canceled and replaced by the following provision :

- A. " The copyright provisions of this Law shall apply to the works of Jordanian, and non-Jordanian authors, published or unpublished, which exists within the Kingdom in any of the objective forms provided for in Article (3) Paragraph (b) (of the Original Law) and to the works of Jordanian authors outside the Kingdom, published or unpublished, which exists in any of the objectives forms provided for in Article (3), paragraph (b).
- B. Subject the provisions of International Agreement regarding Copyright and in the absence of such provisions, subject to the principles of reciprocal treatment, the provisions of this Law shall apply to the works of foreign authors published or unpublished abroad which exist in the objective forms provided for in Article (3) paragraph (B) .
- C. For the purposes of applying this Article, persons who are habitual residents of any of the Countries which are members of the International Agreements, to which Jordan is also a member, shall be accorded treatment of the Kingdom's nationals. The provisions of this Article shall also apply to the holders of the rights provided for in Article (23) of this Law.

The prime Minister and the Cabinet are for applying this Law.

ANNEX 3

Copyright Law in Jordan

JORDAN

COPYRIGHT LAW

We, King Hussein I of the Hashemite Kingdom of Jordan, pursuant to Article 21 of the constitution and the resolution of the Houses of Lords and Representatives, hereby ratify this Law and order to promulgate it and to add it to the Laws of the State.

Law No. 22 for the Year 1992
Copyright Protection Law

ARTICLE (1)

This Law shall be called " Copyright Protection Law for the Year 1992 " and shall be implemented on the date of its publication in the Official Gazette.

ARTICLE (2)

The following words, wherever they are mentioned in this Law, shall have the meanings assigned against each of them unless the context dictates otherwise:

The Minister : The Minister of Culture.

Filing : Handing in a work of art to the Centre pursuant to the provisions of this Law.

The Centre : The Filing Centre in any department or government authority accredited by the Minister.

The Court : The competent court of first instance.

ARTICLE (3)

A) The original works of literature, arts and science shall enjoy protection under this law whatever their type, importance or purpose of production .

B) The protection shall comprise the works of art whose mode of expression is in writing, sound, drawing, photography or motion and in particular:

1. Books, Booklets and other writings.
2. The works of art which are conveyed orally such as lectures, speeches and sermons.
3. Dramatic works, song plays, dramatic-musical works and pantomimes.
4. Musical works whether or not in musical notations and whether or not accompanied by words.
5. Cinematic, radio broadcasting and audio-visual works of art.

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6. The works of drawing, painting, sculpture, engraving, architecture, applied-arts and decoration.
 7. Explanatory diagrams, maps, plans, blue-prints, and three-dimensional works relating to geography and typography.
 8. Computer software.

C) The protection shall include the title of the work of art unless the title is a common expression which denotes the topic of the work.

ARTICLE (4)

Any person who publishes a work attributed to himself whether by mentioning his name on it or by any other method shall be regarded as the author unless otherwise proven. This provision shall apply to the pseudonym, provided that there is no doubt as to the real identity of the author.

ARTICLE (5)

Without prejudice to the rights of the author of the original work, he shall enjoy protection and shall be considered an author for the purposes of this Law:

A) Whoever translated a work of art into another language, or transformed it from one type of literature, arts or science into another, or abridged, amended, modified, explained, commented on, or indexed a work of art, or any other way which renders it novel in form.

B) Whoever performed and conveyed to the public a work of art made by others whether this performance was through singing, playing, putting into rhythm, reciting, taking photographs, painting, pantomiming, choreographic acting, or any other way.

C) Whoever compiled encyclopedias and anthologies which constitute intellectual original works as to selection and arrangement of material and whoever compiled collections containing selected chrestomathy of poetry, prose, music, or such like provided that the sources and authors are mentioned in these collections.

ARTICLE (6)

If a work of art is made up for the account of another person, then the copyright shall belong to the original author, unless otherwise agreed upon in writing.

ARTICLE (7)

Unless the collections are characterized by personal effort which embody innovation or arrangement, the protection provided for in this law shall not include the following works of art:

A) Laws, regulations, court judgements, the decisions of administrative bodies, international conventions, and all official documents, as well as the complete or partial official translations thereof.

B) Published, broadcasted or publicly announced news of the day.

C) The works of art which fall in the public domain. The national folklore shall be regarded as public ownership for the purposes of this Article provided that the Ministry shall exercise the rights of the author as regards those works against distortion, modification or detrimental to the cultural interests.

ARTICLE (8)

The author alone shall have the following rights:

A) The right to attribute to himself his work and to have his name mentioned on all the produced copies whenever the work is offered to the public unless the work is mentioned accidentally during a news presentation of current events.

B) The right to decide publishing his work and to determine both the method and date of publication.

C) The right to make any amendment to his work whether by alteration, modification, omission or addition.

D) The right to shove away any infringement upon his work and to stop any distortion, falsification, modification of the work or any violation upon it, which is detrimental to his reputation or honour. However, if there has been any omission, alteration, addition or any other modification in the translation of the work of art, the author shall have no right to prevent it, unless the translator fails to point out the places where this modification took place or if the translation entails detriment to the reputation of the author or his cultural or artistic standing or contravenes the contents of the work of art.

E) The right to withdraw his work from circulation if there have been serious and legitimate reasons thereto. In this case, the author shall have to indemnify the party upon whom the financial exploitation rights have devolved with a fair compensation.

ARTICLE (9)

The author shall have the right to exploit his work of art financially in any way he chooses. No other person shall be entitled to exercise this right without written authorization from him or his successors and which includes the following:

A) The right to print and to convey and release his work to the public.

B) The right to reproduce his work by all material forms including photographic, cinematic or recording means.

C) The right to translate his work of art into another language or to adapt it, or to arrange it musically or to make any other alteration thereto.

D) The right to authorize the use of one copy or more of his work to the persons who exploit them in leasing or hiring out and other acts relating to offering the work to the public.

E) The right to convey his work of art to the public through recitation, delivery, display, acting, radio, television and cinematic publication or any other means.

ARTICLE (10)

The author alone shall have the right to publish his letters. However, he or others shall not have the right to exercise this right without a prior authorization from the addressee or his heirs if publishing those letters is detrimental to the addressee.

ARTICLE (11)

A) Upon obtaining an authorization from the Minister, any person shall be allowed to translate any foreign work of art into the Arabic language after the elapse of one year as of the date of a request for an authorization to translate from the author or from the party that has translated it into another foreign language, if neither of them has translated it into the Arabic language or authorized another party to do so. If the authorization for translation is issued, the author of the work of art or whoever translated it under authorization from the author, shall be entitled to a fair compensation from the applicant who obtained an authorization for translation.

B) The protection period for a foreign work of art as to exploitation through translating it into the Arabic language shall expire after the elapse of five years from publishing it for the first time in the language from which it is going to be translated .

ARTICLE (12)

It shall not be possible to seize the copyright in any work of art. However, it shall be allowed to seize the copies of the work which have been published. Likewise, it shall not be permitted to seize the work whose author dies before publishing it unless it is proven that he agreed to publication before his death.

ARTICLE (13)

The author shall be entitled to dispose of the financial exploitation rights of his work. The disposal shall be in writing and shall determine in all frankness and detail each disposable right, stating its extent, purpose, exploitation period and place.

ARTICLE (14)

It shall be regarded as null and void the disposal of all author's future intellectual output.

ARTICLE (15)

The transfer of ownership of the original copy of a work of art or a unique copy of it or several copies thereof to others shall not include the transfer of copyright in that work to others. However, whoever owns the copy or copies shall have the right to display it to the public and shall not be obliged to allow the author to reproduce, convey or display it, unless otherwise agreed .

ARTICLE (16)

The copyright in a photographic work shall not entail preventing others from taking

one or more photographs for the self-same thing being the object of the work , even if the photograph or the new photograph has been taken from the self-same place or the self-same conditions in which the first photograph has been taken.

ARTICLE (17)

It shall be allowed to use published works without an authorization from the author in accordance with the following conditions and cases:

A) Presenting, displaying, reciting, acting or putting the work of art in rhythm if it takes place in a family gathering, society meeting, private club, or school and playing musical works by the musical bands of the government or any public corporate body provided that this does not yield any financial returns.

B) Making use of the work for private personal use through making one copy of the same by reproducing, translating, quoting, musical arranging, acting, listening, watching, or adapting it in any other form.

C) Utilizing the work of art by way of illustration in teaching through publications, broadcasts, or audio-visual recordings, to the extent justified by the purpose, for educational, cultural, spiritual, and professional-training purposes, provided that the work is not used for making financial profits and that the name of the author and the work is mentioned.

D) Including paragraphs from a work of art into another work for the purpose of illustration, explanation, argumentation, criticism, cultural use, or examination to the extent justified by the purpose, provided that the work and the author's name are mentioned.

ARTICLE (18)

Newspapers and periodicals shall not be permitted to copy serialized novels, short stories and others which are published in other newspapers and periodicals without the consent of their authors. However, newspapers may copy the articles published in other newspapers, which are of current political, economic and spiritual character which preoccupy the public opinion unless the newspaper which published those articles mentions that copying is prohibited. In all cases there should be reference to the source from which the articles were copied.

ARTICLE (19)

Newspapers and other information media may publish, without authorization from an author, his speeches, lectures, discourses, and such similar works of art which are delivered publicly or addressed to the public provided that in all those cases the work and its author are mentioned. The author of any of these works shall have the right to publish them in one printed book or in any other way or form he chooses.

ARTICLE (20)

Public libraries, non-commercial documentation centres, educational institutions and

cultural and scientific institutions shall have the right to copy any work by photographic or any similar process without authorization from the author provided that the copying and the number of copies are limited to the needs of those institutions and that this copying is not detrimental to the financial exploitation rights of the author's work.

ARTICLE (21)

The heirs of an author shall have exclusive right to determine publishing his works which have not been published during his lifetime unless the author requests otherwise in his will, or fixes a date for publication, in that case the will shall be adhered to.

ARTICLE (22)

The heirs of an author of any work of art shall have exclusive right to exercise on that work the financial exploitation rights provided for in this law. However, if the author contracted in writing during his lifetime, with other parties to exploit his work, then the conditions of the contract shall be executed. If more than one author share in compiling a work of art and if one of them dies without leaving an heir, then his share in the work shall devolve equally to his partners in the authorship, unless there is a written agreement to the contrary.

ARTICLE (23)

The official radio and television establishments shall have the right to broadcast or present the works of art which are shown in theatres or in any other public place. The directors of such places shall make it possible for these establishments to make the necessary artistic arrangements for such broadcasting or presentation. These organizations shall mention the author's name and work's title and pay a fair compensation to the author or his successors and to the party exploiting the place where the work is presented, if required.

ARTICLE (24)

The official radio and television establishments shall have the right to prepare, for their programmes and with their own methods, a non-permanent record for any work of art they are licensed to broadcast or show, provided that they destroy all the copies of the work within one year of the date of preparing those copies unless the author agrees to extend this period. To be excluded are copies of works of art of documentary nature, provided that no more than one copy of each of them is kept

ARTICLE (25)

Whoever has taken a photograph shall not have the right to show, publish, or distribute the original photograph or copies thereof, without an authorization from those represented in the photograph.

This provision shall not apply if publishing the photograph takes place in the context

of public events or if it relates to officials or persons enjoying public renown, or if the public authorities have given permission to its publication for the general welfare, provided that in all cases, no photograph shall be permitted to be shown, published, distributed or circulated if its publication entails detriment to the honour, dignity, reputation, prestige or social standing of the person represented in the photograph. However, the person represented in the photograph shall have the right to authorize its publication in newspapers, journals and other information media , even if the person who takes the photograph does not allow it, unless there is an agreement to the contrary. These provisions shall apply to pictures no matter the method by which they were made, whether painting, engraving, sculpture, or any other means.

ARTICLE (26)

If any work of art does not bear the name of its author or if it bears a pseudonym, the work's publisher shall be considered authorized under the law to exercise the rights of the author provided for in this law, until the author announces his identity and proves its.

ARTICLE (27)

If the heirs of an author of any work of art or his successors, as the case may be, do not exercise the financial exploitation rights in the work, then the Minister shall have the right to exercise these rights by publishing or republishing the work, if the heirs or successors do not do so within six months as of the date of being notified in writing by the Minister, without prejudice to the rights of the heirs or successors, as the case may be, to a fair compensation from publishing or republishing the work.

ARTICLE (28)

The author shall have the right to dispose of any of his rights in a work of art on the basis of a share percentage in the revenue or profit resulting from the financial exploitation of the work by others. However, it shall be stipulated that the author shall have the right to obtain an additional part of that revenue or profit if it is revealed that the agreement for exploiting his work was unfair to him, or became so because of circumstances or reasons which were concealed at the time of agreement, or occurred afterwards.

ARTICLE (29)

The author of original works of plastic arts and musical manuscripts shall have the right to share the revenue of each public auction sale of these works following the first assignment made by the author. The regulations shall determine the conditions for exercising this right, the share percentage in each sale revenue and the method of collection. Any agreement or arrangement which violates, or takes place in a way that contradicts the provisions of this Article shall be considered as null and void, provided that this provision does not apply to architectural and applied arts works.

ARTICLE (30)

The copyright protection period provided for in this law shall be valid for the lifetime

of the author and for thirty years after his death, or after the death of the last person remaining alive among the authors who took part in compiling the work, if there is more than one author.

ARTICLE (31)

The protection period for the following works of art shall be valid for thirty years as of the date of their publication:

- A) Cinematic, television and photographic production works which do not have a creative nature as they are limited to the mechanical transmission of images.
- B) Works of applied arts.
- C) Any work of art whose author or copyright holder is a corporate body.
- D) The work of art which is published for the first time after the death of its author.
- E) The work of art which does not bear the author's name or which bears a pseudonym. However, if the author reveals his identity during the protection period, then this period shall start from the date of the author's death.

ARTICLE (32)

The protection period for the following works of art shall be valid for fifteen years as of the date of the author's death:

- A) Computer software.
- B) Translated works of art.
- C) Paintings, manuscripts, sculptures, diagrams, photographs, architectural plans, geographical or topographical maps, and all two-dimensional and three-dimensional works.

ARTICLE (33)

A) A work of art shall be regarded as published as of the date of placing it within reach of the public for the first time. Re-publication shall not be taken into consideration unless the author makes basic amendments at the time of re-publication that it can be considered a new work of art.

B) If the work of art consists of several books or volumes published separately at different intervals, each book or volume shall be regarded as an independent work of art as far as the publication date is concerned.

ARTICLE (34)

A) After the elapse of the protection period provided for in this law for any work of art, or when the author has no heirs, or when there are no successors to the author before the elapse of the protection period, then the work shall fall into the public domain in such a way that any person shall have the right to reproduce, publish or translate it, if it has been reproduced, published or translated before.

B) If the work of art provided for in Paragraph (A) of this Article has not been reproduced, published or translated before it falls into the public domain, it shall not

be allowed to exploit any right in that work including reproduction, publication or translation except under a license granted by the Minister. The license shall be valid for fifteen years and shall be regarded as revoked if its holder has not exercised it during a whole year, or if he starts exercising it and then stops for a whole year.

ARTICLE (35)

A) If more than one person takes part in compiling a work of art in such a way as to make it impossible to separate the share of each of them in compiling the work, all of them shall be considered as equal owners of the work, unless otherwise agreed . None of them shall be entitled to exercise the copyright in the work except if they all agree to that and each one of them shall have the right to file a lawsuit if any copyright infringement takes place.

B) However, if it is possible to separate the share of each of the participants in compiling the work from those of the other partners, then each of them shall have the right to exploit the copyright in the part which he contributed, provided that this is not detrimental to the exploitation of the work itself or to the rights of the rest of the partners in the work, unless otherwise agreed .

C) If a group of persons participate under the directives of a natural or legal person in compiling a work of art , called a collective work, and if that person commits himself to publishing it in his name and under his supervision, and if the participants work merge into the general objective aimed at by that person from the work or the innovative idea behind it in such a way as to make it impossible to separate the work done by each of the participants in compiling the work and in setting it apart, then the person who directs and organizes compiling the work shall be regarded as the author of the work, and he shall have exclusive right to exercise the author's rights therein.

ARTICLE (36)

A) If more than one person participates in compiling a music-song work, the author of the musical part shall have the exclusive right to license to others the public performance for the whole work or to authorize, publish, or reproduce the work, provided this does not prejudice the copyright of the author of the literary part in the work, who has the right to publish the part belonging to him, provided that he does not dispose of it as a basis for another musical work, unless otherwise agreed .

B) While, the works of art which are performed by movements accompanied by music, the shows accompanied by music and other similar works, the author of the non-musical part of the work shall have the right to license to others the public performance of the whole work or to authorize, publish or reproduce the work . As regards the author of the musical part of the work, he shall have the right to dispose of the music part only, provided that the music is not used in a work similar to the joint work, unless otherwise agreed .

ARTICLE (37)

A) Each of the following shall be regarded as a partner in compiling cinematic, radio and television works:

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1. The scenarist or the author of the written theme of the programme.
 2. The adapter of the present literary work to make it executable.
 3. The dialogist of the cinematic, radio or television works.
 4. The work's musical composer if he composed the music specifically for the work.
 5. The director of the work if he has exercised actual control in executing it and has achieved positive results from the intellectual part bring the work into being.

B) If the work is simplified or derived from another previous work, then the author of the earlier work shall be considered as a partner in the new work.

C) The scenarist, the adapter, the dialogist and the director of the literary work shall jointly have the right to show the new work and the author of the original literary work or the music composer shall not be able to object to that, provided that this does not prejudice their rights derived from participating in the work. The author of the literary part and the author of the musical part shall be entitled to publish the part which belongs to him in a way other than the cinema, radio or television, unless otherwise agreed .

D) If one of the participants in compiling a work of art refrains from completing what he should have accomplished, or his part of the work, this shall not entail preventing any of the other participants from using the part which he has completed, provided that this does not prejudice the rights belonging to any of them due to his participation in compiling the work.

E) The person who handles achieving a work of art or takes the responsibility of achieving it and provides the authors with the material and financial means which guarantee producing and directing a work shall be regarded as the producer of the cinematic, radio or television work.

F) The producer shall be regarded as the publisher of the cinematic, radio or television work and shall enjoy all the rights of the publisher on the work itself and its copies. The producer, shall throughout the period agreed upon to exploit the work, act as a deputy to the authors of the work and their successors in contracting with other parties to show and exploit the work, without prejudice to the rights of the authors of adapted literary and musical parts, unless otherwise agreed .

ARTICLE (38)

The filing provisions provided for in this law shall apply to every work of art published or reproduced in the Kingdom for a Jordanian or non-Jordanian author and to the works published or reproduced abroad for a Jordanian author if it is published in the Kingdom, provided that the work of art is filed at the Centre, without paying any fees, before the work is offered for sale or distribution in the Kingdom and that the filed copies shall be identical to the work in every respect and be among its best produced copies. On re-publication, the work of art shall be subject to the filing provisions under this law.

ARTICLE (39)

Each of the author of the work, its publisher, the owner of the printing press where the work is reproduced, its producer and its distributor shall be responsible for filing the work of art. Likewise, the importer of any work of art or any person who stands for him , shall be responsible for filing the work which has been reproduced, published or produced outside the Kingdom for a Jordanian author

ARTICLE (40)

Each work of art shall be given a special filing number and the Centre shall handle extracting the artistic data from the work for the purposes of indexing and classifying printed works in accordance with the rules and principles observed in this respect. The artistic data shall be handed over to the person concerned for fixing them on the work.

ARTICLE (41)

If the work of art is a book, each of its author, publisher and the owner of the printing press where the book has been reproduced shall be responsible for recording the indexing and classification data as well as the filing number and data on the recto of the title page of the work. As to the works of art other than books, the filing number shall be recorded on any apparent part of the work.

ARTICLE (42)

Each printing press or establishment which handles reproducing, publishing, producing, distributing a work of art in the Kingdom shall submit a statement every six months, of the works which it reproduced, published, produced or distributed on the form prepared by the Centre for this purpose .

ARTICLE (43)

The Centre shall issue periodic bibliographic data in the form of lists or indexes including the works of art which have been filed with the Centre and shall handle bibliographic information tasks in this field.

ARTICLE (44)

The Centre shall compile a unified index for the identification of the works available in the libraries and information and documentation centers in the Kingdom, indicating the place of each work as well as the libraries and the information and documentation centres which it covers and the commitments and obligations required therefrom by a ministerial decision .

ARTICLE (45)

A copyright protection lawsuit shall not be heard for any work of art which has not been filed with the Centre in accordance with the provisions and procedures provided for in this law .

ARTICLE (46)

The Court may upon a petition filed by the author or any of his heirs or successors take the following measures with respect to any work of art whose author's copyright , or that of his heirs or successors, has been infringed upon, provided that the petition contains detailed and comprehensive description of the work:

1. Stopping the reproduction, publication, distribution, offering or public performance of the work and this provision shall include any part of the work illegally used.
2. Seizing the original work, its copies or photocopies as well as the materials used in re-publication provided that they are not useful for anything else.
3. Impounding the revenues resulting from exploiting the work which has been published through public performance.

B) The petition provided for in Paragraph (A) of this Article shall be filed together with a security deposit that will be a guarantee against any loss and damage sustained by the defendant if it turns out that the plaintiff is not right in his claim. It shall be allowed to file the petition before, upon or during trying the lawsuit. If the Court decides to take the procedures provided for in Paragraph (A) of this Article or any of them before filing the lawsuit, the plaintiff must file his lawsuit within eight days of the date of the Court's decision. If the lawsuit has not been filed during this period, the procedures taken by the court shall become null and void under the law.

C) Any person who sustains damages from any procedure taken by the Court pursuant to the provisions of Paragraph (A) of this Article shall have the right to contest it at the Court which may uphold or revoke completely or partially its earlier decision or may appoint a trustee whose assignment is the republication, presentation or public performance of the work of art provided that the resulting revenue shall be deposited in the Court's safe pending settlement of the dispute. The Court shall determine the party to whom the revenues shall become due to in light of the other aspects in the lawsuit.

ARTICLE (47)

A) The Court may, upon a petition filed by the author, or any of his heirs or successors, order the destruction of a work of art copies or photocopies which have been illegally published as well as the materials used in publishing the work, provided they are not useful for anything else. The Court may, instead of destroying them, order to change the features of the copies, photocopies and the materials or to make them unfit for use. However, if it turns out to the Court that the copyright in a work of art lapses within two years of the date of issuance of the Court's final decision, then it shall order to confirm the seizure so as to settle the compensation that is due to the author.

B) It shall not be permitted to order the destruction of a work of art copies or photocopies or change their features if the dispute concerns the translation of a work of art into the Arabic language. In this case, the Court's decision shall be limited to confirming the seizure of the work, its copies, or its photocopies as the case need be.

C) The Court shall, instead of destroying the copies or photocopies of a work of art, changing their features or destroying the materials, order the confiscation of a work of art copies or photocopies as well as the materials used in producing and selling them to the extent necessary to compensate the author for the damages he has sustained.

D) It shall not be possible in any case for buildings or the sculptures, drawings, decorations or geometric shapes showing on or in them to be subject of seizure. Likewise, it shall not be allowed to destroy, change the features, or to confiscate buildings for the purpose of preserving the copyright of an architect whose blueprints and plans have been illegally used, provided that this does not prejudice his right to an equitable compensation for its use.

ARTICLE (48)

In accordance with the provisions of Article 47, it shall be permitted to order to revert to the former state of any work of art whose copyright has been infringed upon, including making any amendment or omission of parts thereof so as to achieve that purpose.

ARTICLE (49)

The author whose any of his rights in his work of art provided for in accordance with the provisions of this law have been infringed upon shall have the right to receive an equitable compensation, provided that the compensation shall be estimated according to the author's cultural standing, the work's literary scientific or artistic value, and the extent to which the infringer benefited from exploiting the work. The compensation ordered for the author shall be regarded as preferred debt to the net sales value of the things used in the infringement of the author's rights and the seized amounts of money in the lawsuit.

ARTICLE (50)

The Court may upon the request of the judgement beneficiary order publishing the judgement which it issues under this law in one local daily or weekly newspaper or more at the convicted party's expense .

ARTICLE (51)

A)The following shall be penalized by an imprisonment term of not less than three months and a fine not less than JD 500 and not exceeding than JD 1000 or by one of those two penalties :

1. Whoever illegally exercised one of the privileges provided for in Articles 8, 9 and 10 of this law.
2. Whoever offers for sale imitation work of art or copies thereof although he knows that it is imitated or conveys it to the public in any way or imports it into the Kingdom or exports it abroad.

B) In case of a repetition of any of the crimes provided for in Paragraph (A) of this Article, the perpetrator of the crime shall be sentenced to the maximum imprisonment

penalty. The Court

may in this case order to close down the establishment in which the crime has been committed for a period of not more than one year or to suspend its licence for a certain period of time or for good.

ARTICLE (52)

Whoever contravened the provisions of Articles 38, 39, 41 and 42 of this law shall be penalized with a fine of not less than JD 20 and not exceeding JD 100. This penalty shall not exempt him from carrying out the provisions provided for in those Articles.

ARTICLE (53)

The provisions of this law shall apply to the works of art of Jordanian and foreign authors, which are published in the Kingdom and to the works of Jordanian authors which are published abroad. As to the works of the foreign authors which are published abroad, international conventions and reciprocity shall be taken into consideration in their regard.

ARTICLE (54)

The provisions of this law shall apply to the works of art which exist at the time of its application except for Article 41, 42, 51 and 52 whose provisions shall not apply except on events and actions which take place after the implementation of the provisions of this law.

ARTICLE (55)

The provisions of this law shall apply to the events and agreements which take place or are concluded subsequent to the time of its implementation, even if they relate to works of art published or presented for the first time before its implementation. However, with respect to calculating the period of protection for those works, the calculations must include the period which elapsed from the date of the event and until the date of implementing this law.

ARTICLE (56)

The periods provided for in this law shall be computed in the Gregorian Calendar.

ARTICLE (57)

The Council of Ministers shall issue the necessary regulations for implementing the provisions of this law.

ARTICLE (58)

The Ottoman copyright law and any law or legislation whose provisions contradict the provisions of this law shall hereby be repealed.

ARTICLE (59)

The Prime Minister and the Ministers shall be commissioned with the implementation of the provisions of this law.

Al Hussein Ben Talal
19 /3 /1992

Annex 4

We, Al-Hassan Ben Talal, the Regent and pursuant to Article 31 of the Constitution and the resolution of the House of Parliament, hereby ratify this law and order to promulgate it and to add it to the Laws of the State.

Law No. 14 for the Year 1998 The Law Amending Copyright Protection Law

Article 1.

This law shall be called “The Law Amending Copyright Protection Law for the Year 1998” and shall be read in conjunction with Law No. 22 for the Year 1992 referred to hereinafter as the original law as one Law. It shall come into force as of the date of its publication in the Official Gazette.

Article 2.

Article 2 of the original law shall be amended as follows:

- | | |
|---------------|------------------------------------------------------------------------------------------------------------------------|
| First: | By adding the following definition to the word “Ministry” before the definition of the “Minister” mentioned therein: |
| The Ministry: | The Ministry of Culture. |
| Second: | By adding the following definition to the word “fixation” after the definition of the word “Filing” mentioned therein. |
| Fixation: | Putting the work in any permanent material form. |
| Third: | By canceling the definition of the word the “Centre” mentioned therein and replacing it by the following definition: |
| The Centre: | The filling centre of the National Library Department or any other official authority accredited by the Minister. |

Article 3.

Article 3 of the original law shall be amended by adding the following paragraph D with the following wording.

D) Protection shall also be granted to other literary and artistic collections such as encyclopedias, anthologies and data compilations whether in an electronic legible form or any other form, which constitute, in terms of their selection and arrangement of material, creative intellectual works. Protection shall also be granted to collections containing selected pieces of poetry, prose, music or suchlike provided that the sources and authors of such pieces are mentioned in those collections and without prejudice to the authors’ rights with regard to each work constituting part of the said collections.

Article 4.

The text of paragraph C of Article 5 of the original law shall be cancelled and replaced with the following text:

C) The authors of encyclopaedias, selections, data compilations and collections which are protected under the provisions of this law.

Article 5.

The text of Article 11 of the original law shall be cancelled and replaced with the following text:

Article 11.: Notwithstanding the provisions of Article 9 of this law.

- A-1) Upon obtaining an authorization from the Minister, any Jordanian citizen may translate any printed foreign work into Arabic after the elapse of three years from the date of the first publication of such work.
- A-2) The Minister, or the mandatory thereof, shall be entitled to issue a licence to any Jordanian to reproduce any printed work after the elapse of three years of its publication dates for the works relating to technology and natural sciences including mathematics, after the elapse of seven years of the works of poetry, music, art and fiction and after the elapse of five years for the other types of works.
- B) The licence for translation and reproduction provided for in paragraph (A) of this Article shall be granted in order to fulfill the educational purposes needs of schools and universities and for disseminating common culture.
- C) In case a licence for translation or reproduction is issued, the author of the original work of art which has been translated or reproduced shall be entitled to receive an equitable remuneration from the applicant for a translation or reproduction licence.

Article 6.

The text of paragraph A of Article 17 of the original law shall be cancelled and replaced with the following text:

- A) Presenting, displaying, reciting, acting or putting the work of art into rhythm if it occurs in a family gathering or at educational, cultural or social institution. The musical bands of the state may play musical works provided that no financial returns are generated.

Article 7.

The text of Article 23 of the original law shall be cancelled and replaced with the following text:

Article 23

Without prejudice to the provisions of Article 17 of this law:

- A-1) A performer shall have the right to prevent third parties from fixing his unfixed performance or from reproducing any fixation of his performance or broadcasting it to the public without his consent.
- A-2) The radio and television commission or as the copyright holder shall have the right to prevent third parties from fixing unfixed broadcast programmes or from reproducing any fixation of those programmes or broadcasting it to the public through wireless means without obtaining a permission from the concerned commission or the copyright holder as the case may be.
- B) The producers of phonograms shall enjoy the right to authorize or prevent direct or indirect reproduction of their audio recordings and leasing the original copies of such recordings.
- C) The protection period of the rights of performers and producers of phonograms shall be fifty years to be calculated as from the first of January of the calendar Gregorian year following the year in which the performance or the fixation of the phonogram, as the case may be, has taken place.
- D) The protection period for the broadcasting programmes broadcasted by any radio or television commission shall be twenty years to be calculated as from the first of January of the calendar Gregorian year following the year in which the programme was broadcasted for the first time.

Article 8

The text of Article 30 of the original law shall be cancelled and replaced with the following text:

Article 30

The protection period for the financial rights of the author provided for in this law shall be valid for the lifetime of the author and for fifty years after his death or after the death of the last person remaining alive among the authors who took part in compiling the work if they were more than one author.

Article 9

The text of Article 31 of the original law shall be cancelled and replaced with the following text:

Article 31

The protection period for the following works of art shall be valid for fifty years as the date of publication:

- A) Cinematographic and television works. In case such works are not published during the said period, then the protection period shall be calculated from the date of completing the work.
- B) Any work whose author or copyright holder is a corporate body.
- C) Any work of art which is published for the first time after the death of its author.
- D) Any work of art which does not bear the name of its author or which bears a pseudonym. However, if the author reveals his identity during the protection period, the protection period shall however commence from the date of the author's death.

Article 10

The text of Article 32 of the original law shall be cancelled and replaced with the following text:

Article 32

The protection period for the following works of art shall be valid for twenty-five years as the date of the completion thereof:

- A) Photographic works which are not of constructive nature and are limited to recording images automatically.
- B) Works of applied arts.

Article 11

The text of Article 36 of the original law shall be cancelled and replaced with the following text:

Article 36

- A) The employees of the Copyright Protection Office at the National Library Department who are commissioned by the Minister shall be regarded as judicial policemen when implementing the provisions of this law.
- B) In case any doubt that any of the provisions of this law was violated by any shop engaged in printing,

reproducing, producing or distributing works of art, then the employees of the Copyright Protection Office may search the shop and seize the copies and all the materials used in committing that violation and refer them together with the violators to the court. The Minister may ask the court to close down the shop.

Article 12

Article 38 of the original law shall be amended by adding the following phrase to its beginning: “Without prejudice to the provisions of Article 45 of this law”.

Article 13

The text of Article 45 of the original law shall be cancelled and replaced with the following text:

Article 45

Non-filing of the work of art shall not affect the rights of the author provided for in this law.

Article 14

The text of Article 51 of the original law shall be cancelled and replaced by the following text:

Article 51

- A) Imprisonment penalty of no less than three months and of no more than three years as well as a fine of no less than JD's 1000 and of no more than JD's 10,000 or by one of those two penalties shall be imposed upon:
- 1) Any person who illegally exercised one of the privileges provided for in Articles 8, 9, 10 & 23 of this law.
 - 2) Any person offers for sale circulation or lease an imitated work of art or copies thereof, or communicates it to the public in any manner whatsoever, or imports or exports it despite knowing that it is imitated.
- B) In case of a repetition of any of the crimes provided for in paragraph (A) of this Article, the perpetrator of the crime shall be penalized by the maximum of the imprisonment and fine penalties. In such a case, the court may decide to close down the establishment in which the crime was committed for a period of no more than one year or to suspend its licence for a certain period of time or permanently.

Article 15

The text of Article 52 of the original law shall be cancelled and replaced with the following text:

Whoever contravenes any of the provisions of Article 38, 39, 41 & 42 of this law shall be penalized with a fine of no less than JD's 500 and of no more than JD's 1000. This penalty shall not exempt the contravener from carrying out the provisions provided for in the said articles.

ANNEX 5

MEMORANDUM

TO: Farhat Farhat
Polly Maier

FROM: Salah Al Bashir
Maher Hamden
Jay Erstling

RE: Assessments of the Copyright and Trademark Law Amendments

DATE: 22 August /1999

Two memoranda follow: the first deals with an assessment of the Copyright Amendments, and the second with the Trademark Amendments. We would appreciate your feedback, questions, or comments. We also hope you will forgive any word-processing, grammatical, or other errors as the memos were not completed until the wee hours of the morning.

* * *

Copyright

This memorandum comments on the conformity of the Proposed Amendments to the Copyright Protection Law and responds to comments submitted by IIPA as well as those submitted by the Intellectual Property Law Consultant, Polly Maier.

The Proposed Amendments to the Copyright Law, like any law subject to legislative negotiation and debate, are not ideal and lack transparency in certain technical respects. For example, the Amendments' enforcement provisions need to be completed by reference to the Civil Code and Codes of Civil and Criminal Procedure (as is typical in many Civil Law countries). In addition, the By-Laws, which have yet to be drafted, will need to elucidate and complete the point of attachment provisions for neighboring rights. Nevertheless, the Amendments to the Copyright Law go far in ensuring that copyright protection in Jordan will be in conformity with the requirements of TRIPs and the Berne Convention.

With respect to the comments submitted by the IIPA, all comments have been carefully considered and many have been included in the Proposed Amendments. Some of the comments have not been expressly addressed in the Amendments, however. The following is a list of comments not expressly included in the Proposed Amendments, together with the reasons why:

1. The Amendments do not clarify the extent of retroactive protection of existing works under the Berne Convention: Beginning with the 1992 Law, retroactive protection has always been presumed. Moreover, retroactive protection is assured in Article 14 of the Amendments, which amends Article 53(B) of the Law to state that, "Subject to the provisions of International Agreements regarding copyright..., the provisions of this Law shall apply to the works of foreign authors published and

unpublished....” As a result of this provision, Article 18 of Berne governs and ensures retroactive protection.

2. The Amendments do not clarify whether the level of protection for computer programs is equal to that of other literary works: Under the Copyright Law, all protected works are granted protection equal to that of literary works unless the Law expressly provides otherwise. There are no provisions for computer programs that provide a level of protection other than that for literary works.
3. The Amendments do not clarify the extent of rental rights, particularly for computer programs: Article 9(D) of the Copyright Law, which deals with rental rights, is intended to provide an inexhaustible exclusive right of commercial rental in conformity with Article 11 of TRIPs.
4. The Amendments do not address a limitation on economic rights in Article 9 as those rights are limited to exploitation “for financial gain”: The provision is not limited to exploitation for financial gain. It presumes that exploitation may also not be for financial gain. Moreover, the more accurate translation of the term in Article 9 is “financially” and makes no assumption that economic rights are linked to profit.
5. The Amendments do not modify Article 17(C) of the Law dealing with fair use in teaching: Article 17 has been amended to add a limitation that “the publishing or republishing shall be for the public benefit.” In light of that and the other safeguards provided in Article 17, it is believed that Article 17(C) constitutes one of the “special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder” permitted by Article 13 of TRIPs.
6. The Amendments do not narrow the scope of Article 20 of the Copyright Law dealing with fair use by libraries and other institutions: It was considered that since the provision only permits copying “that is not detrimental to the financial exploitation rights of the author’s work” and requires that the copying be “limited to the needs of [the] institutions,” the Article does not contravene the spirit of Article 13 of TRIPs or Articles 9(2) or 10(2) of Berne.
7. The Amendments do not address Article 27’s provision regarding compulsory licensing: Article 27 deals with the extremely rare occurrence that the heirs or successors of an author (not the author himself or herself) fail to exercise financial exploitation rights in a work, and it requires the Minister to provide 6 months’ notice, to provide the heirs or successors with fair compensation, and to act without prejudice to the rights of the heirs or successors. Accordingly, it was determined that the Article does not unduly conflict with TRIPs or Berne.
8. The Amendments, while deleting a limitation on seizure and destruction in Article 47(A), do not delete that limitation in Article 46(A)(2): Article 46 deals with provisional measures, and sanctions seizure in all cases where the seized goods cannot otherwise add value to the country. Since Article 50 of TRIPs, which obliges countries to establish “prompt and effective provisional measures”, does not expressly require seizure, it was considered that the limitation in Article

46(A)(2) did not contravene TRIPs. Because Article 47 deals with enforcement measures in general, the limitation on seizure was removed from that provision.

9. The Amendments do not increase penalties for infringement: Given the relative economic state of Jordan, it was considered that the current monetary penalties were sufficient. Moreover, strong criminal sanctions, including imprisonment of up to one year, exist that create an effective disincentive to violating the Copyright Law.
10. The “Other Substantive Issues” raised by the IIPA and not addressed in the Amendments do not relate to WTO compliance.

The comments submitted by Polly Maier, the Intellectual Property Consultant, were based on an English translation of the Proposed Amendments to the Copyright Law. In light of the fact that the translation was prepared under an urgent time frame, without the ability to closely verify and refine the translation, some of Ms. Maier’s comments relate to translation or word-processing errors. Others, however, are of a substantive nature.

1. Article 3 (amending Article 11 of the original law): (1) In Article 11(C), the last part of the sentence in the Arabic text correctly reads “reproduction”. (2) In Article 11(D), it is presumed that the compensation comes from the applicant.
2. Article 6 (amending Article 23 of the original law): The term “official” in Article 23(A)(2) is an inexact translation. The correct translation is “entity”, which conveys no official status whatsoever. In addition, the adjective “unfixed” applies only to the phrase dealing with “fixing...broadcast programs”; it does not apply to the phrases concerning “reproducing” or “broadcasting”.
3. Article 11 (amending Article 32 of the original law): The Arabic version of the Proposed Amendments provides a protection period of twenty-five years (and not twenty) for photographic works and works of applied art.
4. Article 12 (amending Article 46 of the original law): (1) Article 46(C) was not drafted with the intent to exclude the exercise of provisional measures to prevent the entry into the channels of commerce of goods, including imported goods immediately after customs clearance. In addition, provisions relating specifically to border measures are under preparation and will be enacted by the Kingdom. (2) With respect to Article 46(G), Ms. Maier considers that the phrase “due to passing the period of filing a lawsuit” is an impermissible limitation on the compensation that may be provided a defendant in the case of revocation of provisional measures under Article 50(7) of TRIPs. While her argument is a compelling one that TRIPs permits no limitations in cases of revocation, it may also be argued that the absence of a comma following the word “revoked” in Article 50(7) means that a defendant is entitled to compensation only when “the provisional measures are revoked...due to any act or omission by the applicant.” Since the failure to institute a lawsuit within the provided period of time constitutes an “act or omission,” it may reasonably be considered that Article 46(G) is not inconsistent with TRIPs. (3) Ms. Maier is correct that the law still fails to provide for compensatory damages and payment of a rightholder’s

expenses in intentional infringement cases. Since provisions for recovery of profits derived from unintentional infringement are, as Ms. Maier states, optional, however, the law is not inconsistent with TRIPs by failing to require those damages.

5. Article 14 (amending Article 53 of the original law): (1) The phrase “which exists in any of the objective forms provided for in Article 3, paragraph (b)”, found in Article 53(A) and (B), refers to the phrase “works of art whose mode of expression is in writing, sound, drawing, photography or motion and in particular...” and not to the eight examples of copyrightable works that follows in Article 3. (2) The Arabic version of Article 53(B) contains the word “abroad” that is missing from the English translation. (3) Article 53(C) is an alternative statement of Article 3(2) of Berne, but correctly reflects the intent of the Berne Convention provision. (4) Ms. Maier is correct that 53(C)’s application of the provisions of Article 53 to neighboring rights is inadequate; however, the by-laws will contain more complete and precise language (such as that provided by Ms. Maier in her earlier comments) that will resolve the problem.

* * *

Trademarks

This memorandum analyzes the Government of Jordan’s “Proposed Draft No () For the Year 1999: A Law Amending the Trademarks Law” in light of its conformity with the TRIPS requirements as well as of Ms. Maier’s comments on the same subject.

1. History of the Draft:

The Draft Act has been drafted by the Department of Intellectual Property at the Ministry of Industry and Trade. The AMIR’s Proposal was part of the documentation used in the Drafting. Furthermore, Prior to May IBLA lawyers participated in the discussions with the Intellectual Property Department regarding the requirements. Since early May and until last Thursday, IBLA lawyers did not have a chance to see let alone review the Draft at the different legislative levels.

2. Some General Observations

It is important to say that the Draft Amendment includes substantial improvement on the 1953 Act with regards to conformity with the TRIPS requirement. However certain other points create questions regarding conformity. Some of these questions are clearer as contraventions of TRIPS than others. The reason for that lies, as the GOJ would reasonably argue, in (1) in the fact that some of the TRIPS provisions are included in other laws, and (2) that the Latin drafting school would favor short concise articles with no examples.

When the Transparency Argument is invoked with the Government, the automatic response states that the Jordanian law should be viewed in light of the legislative intent (acceding to WTO), the Draft Act, and jurisprudence on one hand, and the Civil Code, the Code of Civil Procedure, and Evidence Act on the other. All such laws are laws of general application. In our assessment, ascertaining the lack of transparency

would actually rest on the way the judiciary would react to the law as amended and on the dynamics of the different laws among each other.

Moreover, the Draft Act when passed by the Parliament will have gone through different stages and several compromises by the different legislative players and will have been affected by the drafting styles of the Consultants, the Ministry, the Legislative Bureau, the Special Parliamentary committees, and the House and Senate. The result should be weighed with regards to the clear-cut non-conformity.

3. The Draft's conformity with TRIPS:

- 1st. Article (5) of the Draft should be amended to reflect the requirements of TRIPS (16)(3) and Paris (6) bis (1). Language should be added to cover (1) relation between products and services, and (2) translation. Furthermore, the word Similar should be added to describe the goods.
- 2nd. Article 11 of the Draft should include the presumption of confusion as required by TRIPS Article (16)(1) and Paris (6) bis (1). Furthermore, the Article should expressly state the probability of confusion. Lastly, this Article should clearly state that the rights conferred in this article would apply even if the well-known mark is not registered in Jordan.
- 3rd. Article 34 of the Original Law may need to be clarified to ensure that it satisfies the requirement of Paris (6) bis (3).
- 4th. Article (13)(2) of the Draft should at least stay as it was in the original law to satisfy the effective enforcement requirement.
- 5th. Article (15) of the Draft should state that the registration date is the date of the application in the other country instead of the date of actual registration to satisfy Paris (4)(a)(2) and (3).
- 6th. The reference to reciprocity in article (15)(2) if the Draft should be deleted to satisfy the national treatment provisions of TRIPS Article (3)

4. Ms. Polly Maier's Review:

Our comments on Polly's review are contained in the table below.

Polly Maier's Comments	The Governments Response	Our Opinion
<p><u>Enforcement: Amended Article 39</u></p> <p>Amended Article 39 of the Trademarks Law does not incorporate all enforcement procedures and remedies required under the TRIPS Agreement and the Paris Convention. Amended Article 39</p> <p>(1) does not provide for compensatory damages or</p> <p>(2) payment of a right-holder's expenses in infringement cases, as required under TRIPS Agreement Article 45;</p>	<p>(1) The GOJ argues that Article 256 of the Civil Code covers compensatory damages. Article 256 states: "Every injurious act shall render the person who commits liable for damages if he is a non-discerning person".</p> <p>(2) The GOJ argues that the Code of Civil Procedure covers this point. Article 166 of this Code states: "In addition to the different fees and expenses, the court shall order the payment of attorney's fees upon the losing party." The GOJ further argues that it does not need to comply with TRIPS (45)(2) regarding recovery of profits because TRIPS clearly states that countries <u>may not shall</u>.</p>	<p>The GOJ has a valid argument that satisfies the TRIPS requirements.</p> <p>The GOJ has a valid argument that satisfies the TRIPS requirements.</p>

Polly Maier's Comments	The Governments Response	Our Opinion
(3) for seizure on import as required by Paris Convention Article 9;	<p>(3) The GOJ argues that article 39 covers this point. Article 39 states: 1. The owner of a trademark registered in the Kingdom when filing a civil or criminal lawsuit or during the hearings, may request the court for the following, provided that his request is attached with a bank or monetary guaranty accepted by the court: One. Prevent the infringement. Two. A provisional attachment on the products subject to infringement <u>wherever found</u>. The GOJ suggests that the term wherever found means that goods before or after customs control should be seized.</p>	<p>The GOJ has a valid argument that satisfies the TRIPS requirements. Moreover, the GOJ is drafting custom's IP boarder enforcement provisions.</p>
(4) for injunctions to prevent infringing imports from entering into commerce, as required by TRIPS Agreement Article 44;	<p>(4) See Point (3) above.</p>	
	<p>(5) The GOJ argues that Article (39) (2)(b) and (39)(3) in addition to article 66</p>	

Polly Maier's Comments	The Governments Response	Our Opinion
<p>(5) or for safeguards for preventing abuse of enforcement mechanisms as required under TRIPS Agreement Article 48.</p>	<p>of the Civil Code cover this point. Article 39 (2) (b) states: If the trademark owner fails to file a lawsuit within eight days from the date the court approved his request, all measures taken in this regard shall be invalidated. Article (39) (3) states: The defendant or counter-party may claim just compensation if the end-result of the law-suit proved that the plaintiff's claims are invalid, or if the plaintiff fails to file a lawsuit within the specified period. Finally Article 66 of the Civil Code states:</p> <p>Article (66)</p> <ol style="list-style-type: none"> 1- Liability for damage shall be due from the person who exercises his right unlawfully. 2- The exercise of the right shall be unlawful: <ol style="list-style-type: none"> One- If there is intent to aggress. Two- If the interest to be achieved from the act is unlawful. Three- If the benefit therefrom is disproportionate with the damage inflicted on others. Four- If it exceeds custom and usage. 	

Polly Maier's Comments	The Governments Response	Our Opinion
<p>(6) Finally, although provisional measures have been added, they do not incorporate all of the detailed requirements of TRIPS Agreement Article 50.</p>	<p>The GOJ argues that the requirements of Article 50 TRIPS are satisfied.</p>	<p>The GOJ has a reasonably valid argument.</p>
<p><u>Exclusive Rights of Mark-holders, Including Rights in Well-Known Marks: Amended Articles 2, 8(12), 26(1) and 43</u></p> <p>The new subparagraphs of Article 26(1) of the Trademarks Law incorrectly incorporate the requirements of TRIPS Article 16. Amended Article 26(1)(a) of the Trademarks Law relates to rights in all marks, well known or otherwise. It appears to be based on the first part of TRIPS Agreement Article 16(1), which also relates to general rights in marks. However, Article 26(1)(a) of the Trademarks Law omits the second part of TRIPS Agreement Article 16(1), which sets out an evidentiary presumption for likelihood of confusion. That evidentiary provision appears (in a modified version) at the end of Article 26(1)(b) of the Trademarks Law, which is limited to well-known marks. Articles</p>		<p>We agree with Ms. Maier's comment. Language should be added to satisfy this requirement.</p>

Polly Maier's Comments	The Governments Response	Our Opinion
<p>26(1)(a) and 26(1)(b) of the Trademarks Law should be re-organized to correspond with TRIPS Agreement Articles 16(1) and 16(3), respectively.</p> <p>Further, although the latest amendments enhance compliance with TRIPS and Paris Convention requirements for well-known marks, protection is still not completely adequate. First, amended Article 8(12) of the Trademarks Law, relating to registration, does not cover translations, as required under Paris Convention Article 6<i>bis</i>. Second, it does not cover marks used for goods identical to those covered by well-known mark, as required by Paris Article 6<i>bis</i>. Third, it does not cover cases where an essential part of a mark is a reproduction of a well-known mark, or an imitation liable to create confusion therewith, as required under Paris Article 6<i>bis</i>.</p> <p>Finally, amended Article 26(1)(b) of the Trademarks Law, dealing with exclusive rights of owners of well-known marks, does not comply with all applicable requirements. Amended Article 26(1)(b) only prohibits the use of the <i>same</i> mark ("this mark"), rather</p>		<p>We agree with Ms. Maier's comment. Language should be added to reflect this requirement.</p> <p>We agree with Ms. Maier's comment. Language should be added to reflect this requirement.</p> <p>We do not agree. The test of resemblance for all Trademarks assumes this point. Stating it with regards to Well-known marks would imply that the legislature wants to change the provision for other trademarks.</p>

Polly Maier's Comments	The Governments Response	Our Opinion
than similar marks, as required under TRIPS Agreement Article 16 and Paris Article 6 <i>bis</i> , taken together.		
Article 22(1) of the Trademarks Law, governing cancellation of a mark for non-use, contains new provisions necessary for compliance with TRIPS Agreement Article 19. One additional amendment is necessary. Under TRIPS Agreement Article 19(1), a mark-holder must have the opportunity defeat cancellation by showing “valid reasons” for non-use based on obstacles, including circumstances independent of his will, such as import restrictions on or other government requirements for goods or services protected by the mark. Article 22(1) of the Trademarks Law merely references “special commercial circumstance or valid reasons,” a narrower standard. TRIPS’ broader bases for defeating cancellation must be added either to the law or to the regulations.	The GOJ argues that “valid reasons” include the requirements of the TRIPS agreement.	We do not believe that the judiciary would read this article to exclude the states banning of imports. However, for the sake of transparency the Article should preferably include language to that effect.
<u>Bases for Refusal of Registration: Amended Article 8</u> Amended Article 8 of the Trademarks Law fails to prohibit the registration of certain designations, such as state emblems and	The GOJ argues that Article (8) of the Act covers these requirements. Article 8 of the Trademark Act states: Article (8) Marks Which May Not Be Registered As Trademarks	We believe that the GOJ has a reasonably valid argument. We also believe that a typing error exists in article 8 (4). We believe that Article 8 (4)

Polly Maier's Comments	The Governments Response	Our Opinion
<p>official signs and hallmarks, as <i>elements</i> of trademarks, as required under Paris Convention Article 6<i>ter</i>. Article 8 of the Trademarks Law requires language indicating that such designations may not be included as elements of trademarks.</p>	<p>The following may not be registered as trademarks</p> <ol style="list-style-type: none"> 1. Marks which resemble the emblem of His Majesty the King or Royal crests or the word royal or any other words, characters or representations which may lead to the belief that the applicant enjoys royal patronage. 2. The insignia or decorations of the government of the Hashemite Kingdom of Jordan or those of foreign states or countries unless with the authorization of the competent authorities. 3. Marks indicating any official designation unless the application of which is demanded by the competent authorities to whom such mark belongs or is under their supervision. 4. Mark which resemble the national flag or the military or naval banners of the Hashemite Kingdom of Jordan or its honorary decorations or insignia or the national, military or naval banners. 5. Marks which include the following words and expressions: "patent", "patented", "by royal patent", "registered design", "copyright", 	<p>should read foreign national, military or naval flags.</p>

Polly Maier's Comments	The Governments Response	Our Opinion
	<p>“counterfeiting is forgery”, or similar words or expressions.</p> <p>6. Marks which are contrary to the public order or morality or <u>which lead to deceiving the public</u>, or marks which encourage unfair trading competition or contain false indications as to their real origin.</p> <p>The GOJ argues that article (8)(6) is a catch all article.</p>	

Conclusion

It is our assessment that the Trademark legislation in Jordan after passing the Draft Amendment would suffer from a manageable transparency problem. However, it is our opinion that the points stated under 2 above which correspond what has been raised by Ms. Maier has to be incorporated to the legislation.

Dr. al-Bashir has raised these points with Dr. Halliqa and with Mr. H.E. Osama Malkawi a member of the House. On Sunday, a decision would be made whether an attempt to deal with these issues shall be made on the House's session that day which may open the door for some members of Parliament to review some of the provisions that have passed, or to try to introduce the changes at the Senate level and then refer the Draft back to the House.

ANNEX 6

Draft By-Law concerning Article 53(C) Of the Amended Copyright Protection Law (Neighboring Rights)

Article 14 of the Proposed Amendments to the Copyright Protection Law amends Article 53 of the Law, which deals with the Law's scope of applicability. Amended Article 53(C) deals in part with the applicability of the Law's provisions on neighboring rights, and reads as follows: "The provisions of this Article shall also apply to the holders of the rights provided for in Article 23 of this Law." This provision fails to meet fully the obligations of TRIPs Article 14 and also creates problems of adequacy with the Rome Convention. To rectify these difficulties, a by-law needs to be drafted that fills out and explains the intent of Article 53(C). An example of such a by-law¹ follows:

For the purposes of applying the second sentence of Article 53(C) of the Law, the following shall be taken into account:

- A. Performers shall be protected under the Law if any of the following conditions is met:
 - 1. The performance takes place in the Kingdom of Jordan or in a country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which Jordan is party, or the performance takes place in a country that grants reciprocal treatment to the Kingdom;
 - 2. The performance is incorporated in a phonogram which is referred to in Paragraph C of this by-law.
- A. Producers of phonograms shall be protected under the Law if any of the following conditions is met:
 - 1. The producer of the phonogram is a national of the Kingdom of Jordan or of any country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which Jordan is party, or the producer of the phonogram is a national of a country that grants reciprocal treatment of the Kingdom.
 - 2. The first fixation of the sound was made in the Kingdom of Jordan or in any country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which Jordan is party, or the first fixation of the sound was made in a country that grants reciprocal treatment to the Kingdom; or

¹ The text of this by-la is based on Polly Maier's proposed amendments to Article 23(E), (F), and (G) of the Copyright Protection Law, which in turn are based on Articles 4, 5, and 6 of the Rome Convention.

1. The phonogram was first published in the Kingdom of Jordan or in any country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which Jordan is party, or the phonogram was first published in a country that grants reciprocal treatment to the Kingdom. If a phonogram was first published in a country that is not party to an
 2. international agreement to which Jordan is party or that does not grant reciprocal treatment, but was also published, within thirty days of its first publication, in a country that is part to such an agreement or that does grant reciprocal treatment, it shall be considered as first published in such a country.
- C. Broadcasters shall be protected under the Law if either of the following conditions is met:
1. The headquarters of the broadcasting organization are situated in the Kingdom of Jordan or in any country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of intellectual Property Rights, to which Jordan is party, or the headquarters of the broadcasting organization are situated in a country that grants reciprocal treatment to the Kingdom; or
 2. The broadcast was transmitted from a transmitter situated in the Kingdom of Jordan or in any country party to an international agreement on neighboring rights, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, to which Jordan is party, or from a transmitter situation in a country that grants reciprocal treatment to the Kingdom².

² These provisions assume that Jordan will not exercise any of the reservation permitted under TRIPs Article 1(13)

ANNEX 7

Special Requirements with Respect to Border Measures (Counterfeit Trademark or Pirated Copyright Goods)

The following is a summary of the provisions in TRIPs dealing with the special border measures that Jordan and every WTO Member must have in place:

Article 51

- The rightholder must have the right to lodge an application in writing with the competent administrative or judicial authorities for the suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods. In other words, the rightholder to block the release of allegedly infringing goods.

Article 52

- The applicant for provisional measures must provide *prima facie* evidence of infringement and must be able to provide a sufficiently detailed description of the goods to make them recognizable.
- The competent authorities must inform the applicant within a reasonable period of time whether or not they will grant the requested relief.

Article 53

- The competent authorities must have the authority to require that the applicant provide security or an equivalent assurance, but the security or other assurance may not unreasonably deter recourse to procedures.
- The owner, importer, or consignee of the goods must be entitled to the release of the goods upon the posting of adequate security where the release of goods involving industrial designs, patents, layout-designs, or undisclosed information has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority and the 10-working-day period of Article 55 has expired without the granting of provisional relief (and all other conditions for importation have been complied with).

Article 54

- Both the importer and the applicant must be promptly notified of the suspension of the release of goods.

Article 55

- If, within 10 working days (at most) after the applicant has been served notice of the suspension, the customs authorities have not been notified that proceedings on the merits have been initiated (or that the provisional measures have been extended), the goods must be released (provided the other conditions of importation have been fulfilled). The ten-day period can be extended for another 10 days where appropriate.
- If proceedings on the merits have been initiated, the defendant has to have a right to a review and a right to be heard within a reasonable period of time in order to determine whether the measures should be modified, revoked, or confirmed.
- Where the suspension is carried out or continued in accordance with a provisional judicial measure, proceedings leading to a decision on the merits must be begun within a reasonable period of time (to be determined by the judicial authority ordering the measures or, in the absence of a determination, within 20 working days or 31 calendar days from the date of the provisional measure **B** as provided in Article 50(6)).

Article 56

- Where goods have been detained wrongfully, the authorities must have the power to order the applicant to compensate the importer, the consignee and the owner of the goods.

Article 57

- A Rightholder must have sufficient opportunity to have any detained product inspected in order to substantiate claims. The authorities must also have the power to give the importer an equal opportunity.
- Where a positive determination has been made on the merits of the case, countries may allow the authorities to inform the rightholder of the names and addresses of the consignor, consignee, and importer, and of the quantity of the goods.

Article 58

- Where the competent authorities are required to act on their own authority (*ex officio*) to suspend the release of goods in respect of which they have *prima facie* evidence that an intellectual property right is being infringed, the authorities may seek information from the rightholder to help them carry out their powers.
- In such case, the importer and the right holder must be notified of the suspension.
- Where the importer lodges an appeal against the suspension, the provisions of Article 55 must apply.

- Public authorities and officials must have immunity from liability where actions are taken or intended in good faith.

Article 59

- The competent authorities must have the power to order the destruction or disposal of infringing goods, subject to the right of the defendant to seek judicial review.
- Counterfeit trademark goods may not be re-exported in an unaltered state and may not be subjected to a different customs procedure (other than in exceptional circumstances).

Article 60

- Small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments may be excluded from the scope of the border measure provisions.

NNEX 10

Proposed Changes to the Draft Integrated Circuit Topography Law (18/7/99)

Article 2 (Definitions): Define “Ministry” as the Ministry of Industry and Trade, and “Minister” as the Minister of Industry and Trade. The reason for giving the Ministry of Industry and Trade the authority over this law is that the Ministry has the greatest expertise in the registration and administration of intellectual property rights.

Article 4 (Creation and Ownership): Delete paragraph 4 of this Article. It adds nothing and can cause confusion.

Article 5 (Moral Rights): Delete this Article. Moral rights are of little relevance to integrated circuit protection and are not mentioned in the Washington (Integrated Circuits) Treaty.

Article 6 (Economic Rights): (a) Delete subparagraph 1(B). This right is not mentioned in TRIPs or the Washington Treaty and is unnecessary in light of subparagraph 1(A). (b) Delete the words “or any substantial part of it” that appear twice in subparagraph 1(C). These words are not required by TRIPs or the Washington Treaty and would make the administration of the law unnecessarily complex.

Article 10 (Conditions of Registration): Subparagraphs 2(C)(iii) and (iv) find their origin in the US law and are not required by TRIPs or the Washington Treaty. It may nevertheless serve Jordan’s interest to keep them. A policy decision is therefore needed as to whether or not these provisions should remain in the law.

Article 11 (First Commercial Exploitation): Delete the words “or a substantial part of it” that appear twice in the Article. See explanation under Article 6, above.

Article 12 (Application for Registration): A decision is needed as to whether all, some, or none of the application requirements should be transferred to a by-law. If it is decided to put the requirements for completing an application in the by-laws, the revised Article might read, “An application for registration of a topography shall relate to only one topography and shall include the information, material, and fees prescribed by the by-laws.”

Article 13 (Completion of Application; Establishment of Filing Date): If Article 12 is revised as mentioned above, the first sentence of Article 13(1) might be revised as follows: “Promptly upon receipt of an application for registration, the Registrar shall inspect the application to verify that it includes all information, material, and fees required under Article 12 and specified in the by-laws.” In any event, the provisions of this Article should be aligned with those of the patent and/or trademark law to ensure general consistency.

Article 14 (Inspection and Registration): A decision is needed as to whether any or all of the information delineated in subparagraphs 14(2)(A) to 14(2)(E) should be transferred to the by-laws. If it is decided to transfer all the information to the by-laws, subparagraph 14(2) might read, “Upon verification under the previous paragraph, the Registrar shall register the topography and shall enter in the Register the information prescribed by the by-laws.”

Article 16 (Corrections): This provision should probably be transferred to the by-laws.

Article 17 (Notice of Protection): Delete this Article. It is optional under TRIPs and the Washington Treaty and would be of no apparent benefit to Jordan. In addition, it would require that Jordan enforce proper affixation of the notice, which could prove burdensome to the country.

Article 18 (Term of Protection): (a) In accordance with TRIPs and following the US law, the provision should read, “The term of protection for a registered topography shall be ten years, commencing on the date of filing an application for registration, or on the date of the first commercial exploitation, wherever in the world it occurs, whichever period occurs first.” (And not whichever period is longer.) (b) The following sentence should be added to the provision, as permitted by TRIPs: “In any event, protection shall not last longer than fifteen (15) years following the creation of the topography.”

Article 22 (Exceptions): (a) As in the Washington Treaty, combine paragraphs 22(1) and 22(3) to read as follows: “1. To perform the act of reproduction referred to in Article 6(1)(A), where that act is performed for the sole purpose of evaluation, analysis, research or teaching, or for private purposes.” (b) Delete paragraph 22(7). Its origin is the Paris Convention and it is not needed for, or relevant to, integrated circuits.

Article 24 (Action for Infringement; Remedies): Replace this Article. Align it with its parallel provisions in the Patent, Trademark, and Copyright Laws.

Article 25 (Criminal Offences and Penalties): According to TRIPs, Article 61, criminal procedures are not required for infringements of integrated circuit rights. A policy decision is therefore needed as to whether they should be included or not. If the decision is in the affirmative, the fines need to be aligned with those of the other laws.

Article 27 (Register and Certificates as Evidence in Court): Align the provision so that it is consistent with the Trademark and Patent laws.

Part VI (Closing Provisions): Align with the other intellectual property laws. Make sure that Article 30 (or its equivalent) is maintained.

Provisions that Need to Be Added to the Law: TRIPs (Article 37(2)) permits compulsory licensing of topographies of integrated circuits, provided the licensing provisions comply with TRIPs Article 31(a-k) for patents. Assuming that compulsory

licensing provisions are desired, the provisions on compulsory licensing in the patent law need to be adapted to integrated circuit protection and added to the draft law.

ANNEX 11

DRAFT LAW ON THE PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS

Article 1. Definitions

The following terms used in this Law shall have the following meanings:

Kingdom: The Hashemite Kingdom of Jordan

Ministry: The Ministry of Industry and Trade

Minister: The Minister of Industry and Trade

Register: The Register of Topographies of Integrated Circuits, maintained by the Registrar for the registration of topographies and related information

Registrar: The Registrar of Topographies of Integrated Circuits, appointed by the Minister to perform the duties assigned by this Law and the By-Laws promulgated thereunder.

Integrated Circuit: A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function

Topography: The three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture

Protected Topography: A topography in respect of which the conditions of protection referred to in this Law are fulfilled

Rightholder: The creator of a topography, the creator's legal representative if the creator is deceased or legally incapacitated, or a party to whom all of the creator's economic rights in the topography have been transferred by assignment, licensing, or otherwise, subject, however, to the following:

1. If a topography is created by more than one person, each of those persons shall be recognized as a rightholder;
2. Where a topography is created in the course of employment or commissioned by contract, the employer or commissioning party shall be deemed to be the rightholder, unless the parties agree otherwise in a written agreement signed by each of them.

WTO Member: A Member of the World Trade Organization as defined in subsection 2(1) of the World Trade Organization Agreement Implementation Act

By-Laws: By-Laws promulgated by the Minister under this Law which relate to the protection of topographies

Article 2. Subject Matter of Protection

1. Original topographies registered in accordance with Articles 6 to 8 of this Law shall enjoy protection in the Kingdom.

2. An original topography is a topography which is the result of its creator's own intellectual effort and which is not commonplace among creators of topographies and manufacturers of integrated circuits at the time of its creation. A topography that consists of a combination of elements and interconnections which are commonplace

shall be considered to be original and shall be protected if the combination, taken as a whole, fulfills the originality conditions of the previous sentence.

Article 3. Economic Rights

1. Valid registration of a topography entitles the rightholder in the topography to exercise the following exclusive rights:

A. to reproduce the protected topography or any substantial part of it, whether by incorporation in an integrated circuit or otherwise; and

B. to import, sell, or otherwise distribute for commercial purposes the protected topography, or an integrated circuit in which a protected topography is incorporated, or an article incorporating such an integrated circuit containing an unlawfully reproduced topography.

2. Where there is more than one rightholder in a registered topography, the economic rights shall belong to all of them collectively and equally, unless the rightholders agree otherwise in a written agreement signed by each of them.

Article 4. Transfer of Rights¹⁵

1. An assignment or license of rights in a topography shall be valid only if reflected in a written agreement signed by the rightholder or by his duly authorized agent.

2. Upon assignment, licensing or inheritance of a right in a topography, the assignee, licensee or heir shall provide the Registrar with evidence of the transfer of rights. The Registrar shall enter into the Register the particulars of the transfer. The recordation of any transfer under this paragraph shall be deemed to provide all persons with constructive notice of the facts stated in the Register concerning the transfer.

Article 5. Register¹⁶

The Register, applications for registration, and related materials filed with the Registrar shall be made available to the public for inspection and copying upon such conditions as may be prescribed by the By-Laws.

Article 6. Conditions of Registration

The rightholder in a topography may apply to the Registrar for registration of the topography if the following conditions are met:

A. the topography meets the conditions of originality contained in Article 2(2);

B. the topography or an integrated circuit incorporating the topography has not been commercially exploited anywhere in the world, or a period of not more than two years has elapsed since the rightholder first commercially exploited the topography or an integrated circuit incorporating the topography; and

C. the topography or an integrated circuit incorporating the topography was first commercially exploited in the Kingdom, or the creator of the topography, at the time of its creation or on the filing date of the application for registration, is:

(i) a national or a domiciliary of the Kingdom;

(ii) a national or a domiciliary of a WTO member;

(iii) a national or a domiciliary of a country that affords protection for the topographies of nationals or domiciliaries of the Kingdom that is substantially equal to the protection afforded to that country's own

¹⁵ This Article is NOT necessary if national law already provides for transfers in writing and recordation of transfers.

¹⁶ This Article is NOT necessary if national law already so provides.

nationals or domiciliaries, or that is substantially equal to the protection afforded under this Law; or
(iv) an entity or a person that operates a real and effective establishment for the creation of topographies or the production of integrated circuits in the Kingdom or in the territory of a WTO member.

Article 7. Application for Registration

An application for registration of a topography shall relate to only one topography, and shall include the information, material, and fee prescribed by the By-Laws.

Article 8. Inspection and Registration

1. Promptly upon receipt of an application for registration, the Registrar shall inspect the application to verify that the application is complete, that it is accompanied by the required fee, and that it is in compliance with the conditions set forth in Article 6(B) and (C).
2. Upon such verification under the previous paragraph, the Registrar shall register the topography in the Register and shall issue the rightholder a Certificate of Registration. The effective date of registration shall be the date on which the complete application and required fee were received in the Ministry.
3. The By-Laws shall prescribe the information to be included in the Register and on the Certificate of Registration.
- [4.¹⁷ If the Registrar determines that the application is incomplete or not accompanied by the required fee, the Registrar shall, within the time and in the manner prescribed by the By-Laws, provide the applicant a written notice of non-completion specifying a deadline for completion of the application or payment of the fee. If, within the time specified in the notice, the applicant completes the application or pays the fee, the Registrar shall inspect the application to verify compliance with Article 6(B) and (C). Upon such verification, the provisions of paragraph 2, above, shall apply.]

Article 9. Term of Protection

The term of protection for a registered topography shall be ten years, commencing on the date of filing an application for registration, or on the date of first commercial exploitation anywhere in the world, whichever period occurs first. In any event, protection shall not last longer than fifteen years following the creation of the topography.

Article 10. Invalidity

The registration of a topography is invalid and shall be stricken from the Register at the request of any interested party if:

1. the topography was not registrable under Article 6 of this Law at the time of the registration; or
2. the application for registration omitted any material information, or included incorrect material information.

¹⁷ This paragraph is entirely optional, although it is probably advisable to maintain it.

Article 11. Appeals¹⁸

1. Any applicant for registration of a topography may appeal to the High Court of Justice any final decision by the Registrar which relates to registration, amendment, invalidity or other related matters which the By-Laws may consign to the Registrar.
- 2.¹⁹ The failure of the Registrar to issue a Certificate of Registration within the time established in the By-Laws shall be deemed to be a final decision refusing to issue a Certificate of Registration, and shall be appealable as such.
3. Appeals under this Article must be filed within thirty days of the applicant's receipt of notice of the Registrar's decision.

Article 12. Infringement

Any person who, without the authorization of the rightholder, performs any act referred to in Article 3(1)(A) or (B), with respect to a protected topography, is guilty of infringement.

Article 13. Exceptions

Notwithstanding Article 12, it is not an infringement of the rights in a protected topography for any person, without the authorization of the rightholder:

1. to perform the act of reproduction referred to in Article 3(1)(A), where that act is performed for the sole purpose of evaluation, analysis, research or teaching, or for private purposes;
2. to perform the act of reproduction referred to in Article 3(1)(A), where that reproduction relates only to a part of the protected topography which does not meet the requirement of originality referred to in Article 2(2);
3. to perform any act referred to in Article 3(1)(A) or (B) in respect of another topography that is original within the meaning of Article 2(2) and that was created on the basis of that person's evaluation or analysis referred to in paragraph 1, above;
4. to perform any act referred to in Article 3(1)(B) in respect of a topography, or in respect of an integrated circuit in which such a topography is incorporated, that has been put on the market by, or with the consent of, the rightholder; or
5. to perform any act referred to in Article 3(1)(A) or (B) in respect of another identical original topography that was independently created.

Article 14. Exception for Innocent Infringement

1. Notwithstanding Article 12, it is not unlawful to perform any act referred to in Article 3(1)(B) in respect of an integrated circuit incorporating an unlawfully reproduced topography, or any article incorporating such an integrated circuit, where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced topography.
2. After the time that such person has received sufficient notice that the topography was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the rightholder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a topography.

¹⁸ This provision should be aligned with its comparable provision in the Trademark Law.

¹⁹ The By-Laws will need to establish a time limit for the issuance of a Certificate of Registration. In the US law, that time limit is four months after the application has been filed, and failure to issue a certificate within that time limit is deemed to be a refusal to register the topography. In the alternative, a time limit may be inserted in the Law itself.

Article 15. Action for Infringement; Remedies

NOTE: The provisions of this Article should be based on the comparable provisions contained in the Patent, Trademark, and Copyright Laws.

Article 16. Limitation on Actions²⁰

1. Subject to paragraph 2, a civil action for infringement under this Law shall be barred unless the action is commenced within three years after the claimed act of infringement occurs.
2. The limitation period described in paragraph 1 does not apply if:
 - A. the infringement is of such a nature that, at the time of its commission, it would not have come to the attention of a reasonably diligent rightholder; and
 - B. the action for infringement is commenced within three years after the infringement actually became known to the rightholder.

Article 17. Register and Certificates as Evidence in Court²¹

In any action concerning rights in a registered topography, the information contained in the Register or in a Certificate of Registration shall constitute *prima facie* evidence of the facts stated therein, and of the applicant's compliance with the requirements of this Law with respect to the registration of topographies. Documents purporting to be officially certified copies of entries in the Register shall be admitted into evidence without further proof or production of originals.

Article 18. Non-Voluntary Licenses

NOTE: If, in accordance with TRIPs Article 37(2), Jordan chooses to avail itself of the right to grant non-voluntary licenses (for use by or for the Government, or for use by third parties with the authorization of the Government), provisions need to be added comparable to those in the Patent Law. The provisions must be in conformity with TRIPs Article 31(a) to (k).

Article 19. Closing Provisions²²

1. Except as provided in this Law, nothing in this Law shall affect any right granted by or under any other Law.
2. The Prime Minister and the Minister are hereby charged with the enforcement of this Law.
3. This Law shall enter into force [one month after its publication in the Official Gazette.]

²⁰ This provision should be drafted in conformity with the comparable provisions in the Patent, Trademark and Copyright Laws.

²¹ Does this provisions have an equivalent in the Trademark Law? If so, it should be drafted in conformity with that provision.

²² These provisions should be drafted in conformity with their counterparts in the Patent, Trademark, and Copyright Laws

ANNEX 12

REVISED DRAFT LAW ON THE PROTECTION OF TOPOGRAPHIES OF INTEGRATED CIRCUITS

Article 1. Definitions

The following terms used in this Law shall have the following meanings:

Kingdom: The Hashemite Kingdom of Jordan

Ministry: The Ministry of Industry and Trade

Minister: The Minister of Industry and Trade

Register: The Register of Topographies of Integrated Circuits, maintained by the Registrar for the registration of topographies and related information

Registrar: The Registrar of Topographies of Integrated Circuits, appointed by the Minister to perform the duties assigned by this Law and the By-Laws promulgated thereunder.

Integrated Circuit: A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function

Topography: The three-dimensional disposition, however expressed, of the elements, at least one of which is an active element, and of some or all of the interconnections of an integrated circuit, or such a three-dimensional disposition prepared for an integrated circuit intended for manufacture

Protected Topography: A topography in respect of which the conditions of protection referred to in this Law are fulfilled

Rightholder: The creator of a topography, the creator's legal representative if the creator is deceased or legally incapacitated, or a party to whom all of the creator's economic rights in the topography have been transferred by assignment, licensing, or otherwise, subject, however, to the following:

3. If a topography is created by more than one person, each of those persons shall be recognized as a rightholder;
4. Where a topography is created in the course of employment or commissioned by contract, the employer or commissioning party shall be deemed to be the rightholder, unless the parties agree otherwise in a written agreement signed by each of them.

WTO Member: A Member of the World Trade Organization as defined in subsection 2(1) of the World Trade Organization Agreement Implementation Act

By-Laws: By-Laws promulgated by the Minister under this Law which relate to the protection of topographies

Article 2. Subject Matter of Protection

1. Original topographies registered in accordance with Articles 6 to 8 of this Law shall enjoy protection in the Kingdom.

2. An original topography is a topography which is the result of its creator's own intellectual effort and which is not commonplace among creators of topographies and manufacturers of integrated circuits at the time of its creation. A topography that consists of a combination of elements and interconnections which are commonplace

shall be considered to be original and shall be protected if the combination, taken as a whole, fulfills the originality conditions of the previous sentence.

Article 3. Economic Rights

1. Valid registration of a topography entitles the rightholder in the topography to exercise the following exclusive rights:

A. to reproduce the protected topography or any substantial part of it, whether by incorporation in an integrated circuit or otherwise; and

B. to import, sell, or otherwise distribute for commercial purposes the protected topography, or an integrated circuit in which a protected topography is incorporated, or an article incorporating such an integrated circuit containing an unlawfully reproduced topography.

2. Where there is more than one rightholder in a registered topography, the economic rights shall belong to all of them collectively and equally, unless the rightholders agree otherwise in a written agreement signed by each of them.

Article 4. Transfer of Rights

1. An assignment or license of rights in a topography shall be valid only if reflected in a written agreement signed by the rightholder or by his duly authorized agent.

2. Upon assignment, licensing or inheritance of a right in a topography, the assignee, licensee or heir shall provide the Registrar with evidence of the transfer of rights. The Registrar shall enter into the Register the particulars of the transfer. The recordation of any transfer under this paragraph shall be deemed to provide all persons with constructive notice of the facts stated in the Register concerning the transfer.

Article 5. Register

The Register, applications for registration, and related materials filed with the Registrar shall be made available to the public for inspection and copying upon such conditions as may be prescribed by the By-Laws.

Article 6. Conditions of Registration

The rightholder in a topography anywhere in the world may apply to the Registrar for registration of the topography if the following conditions are met:

A. The topography meets the conditions of originality contained in Article 2(2).

B. A period of not more than two years has elapsed since the rightholder has first commercially exploited the topography or an integrated circuit incorporating the topography; and

C. The topography or an integrated circuit incorporating the topography has been commercially exploited anywhere in the world.

Article 7. Application for Registration

An application for registration of a topography shall relate to only one topography, and shall include the information, material, and fee prescribed by the By-Laws.

Article 8. Inspection and Registration

1. Promptly upon receipt of an application for registration, the Registrar shall inspect the application to verify that the application is complete, that it is accompanied by the required fee, and that it is in compliance with the conditions set forth in Article 6(B) and (C).

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2. Upon such verification under the previous paragraph, the Registrar shall register the topography in the Register and shall issue the rightholder a Certificate of Registration. The effective date of registration shall be the date on which the complete application and required fee were received in the Ministry.
 3. The By-Laws shall prescribe the information to be included in the Register and on the Certificate of Registration.
 4. If the Registrar determines that the application is incomplete or not accompanied by the required fee, the Registrar shall, within the time and in the manner prescribed by the By-Laws, provide the applicant a written notice of non-completion specifying a deadline for completion of the application or payment of the fee. If, within the time specified in the notice, the applicant completes the application or pays the fee, the Registrar shall inspect the application to verify compliance with Article 6(B) and (C). Upon such verification, the provisions of paragraph 2, above, shall apply.

Article 9. Term of Protection

The term of protection for a registered topography shall be ten years, calculated as commencing on the date of first commercial exploitation of the topography or the integrated circuit incorporating the topography anywhere in the world.

Notwithstanding the preceding sentence, the term of protection shall not last longer than fifteen years following the creation of the topography.

Article 10. Invalidity

The registration of a topography is invalid and shall be stricken from the Register at the request of any interested party if:

1. the topography was not registrable under Article 6 of this Law at the time of the registration; or
2. the application for registration omitted any material information, or included incorrect material information.

Article 11. Appeals

1. Any applicant for registration of a topography may appeal to the High Court of Justice any final decision by the Registrar which relates to registration, amendment, invalidity or other related matters which the By-Laws may consign to the Registrar.
2. The failure of the Registrar to issue a Certificate of Registration within the time established in the By-Laws shall be deemed to be a final decision refusing to issue a Certificate of Registration, and shall be appealable as such.
3. Appeals under this Article must be filed within sixty days of the applicant's receipt of notice of the Registrar's decision.

Article 12. Infringement

Any person who, without the authorization of the rightholder, performs any act referred to in Article 3(1)(A) or (B), with respect to a protected topography, is guilty of infringement.

Article 13. Exceptions

Notwithstanding Article 12, it is not an infringement of the rights in a protected topography for any person, without the authorization of the rightholder:

1. to perform the act of reproduction referred to in Article 3(1)(A), where that act is performed for the sole purpose of evaluation, analysis, research or teaching, or for private purposes;

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2. to perform the act of reproduction referred to in Article 3(1)(A), where that reproduction relates only to a part of the protected topography which does not meet the requirement of originality referred to in Article 2(2);
 3. to perform any act referred to in Article 3(1)(A) or (B) in respect of another topography that is original within the meaning of Article 2(2) and that was created on the basis of that person's evaluation or analysis referred to in paragraph 1, above;
 4. to perform any act referred to in Article 3(1)(B) in respect of a topography, or in respect of an integrated circuit in which such a topography is incorporated, that has been put on the market by, or with the consent of, the rightholder; or
 5. to perform any act referred to in Article 3(1)(A) or (B) in respect of another identical original topography that was independently created.

Article 14. Exception for Innocent Infringement

1. Notwithstanding Article 12, it is not unlawful to perform any act referred to in Article 3(1)(B) in respect of an integrated circuit incorporating an unlawfully reproduced topography, or any article incorporating such an integrated circuit, where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced topography.
2. After the time that such person has received sufficient notice that the topography was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the rightholder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a topography.

Article 15. Action for Infringement; Remedies

NOTE: The provisions of this Article should be based on the comparable provisions contained in the Patent, Trademark, and Copyright Laws.

Article 16. Limitation on Actions

1. Subject to paragraph 2, a civil action for infringement under this Law shall be barred unless the action is commenced within three years after the claimed act of infringement occurs.
2. The limitation period described in paragraph 1 does not apply if:
 - A. the infringement is of such a nature that, at the time of its commission, it would not have come to the attention of a reasonably diligent rightholder; and
 - B. the action for infringement is commenced within three years after the infringement actually became known to the rightholder.

Article 17. Register and Certificates as Evidence in Court

In any action concerning rights in a registered topography, the information contained in the Register or in a Certificate of Registration shall constitute *prima facie* evidence of the facts stated therein, and of the applicant's compliance with the requirements of this Law with respect to the registration of topographies. Documents purporting to be officially certified copies of entries in the Register shall be admitted into evidence without further proof or production of originals.

Article 18. Non-Voluntary Licenses

NOTE: Provisions need to be drafted comparable to those in the Patent Law. The provisions must be in conformity with TRIPs Article 31(a) to (k).

Article 19. Closing Provisions

1. Except as provided in this Law, nothing in this Law shall affect any right granted by or under any other Law.
2. The Prime Minister and the Minister are hereby charged with the enforcement of this Law.
3. This Law shall enter into force [one month after its publication in the Official Gazette.]

7/29/1999

ANNEX 13

DRAFT

LAW NO. () FOR THE YEAR 1999 THE LAW FOR THE PROTECTION OF LAYOUT- DESIGNS FOR INTEGRATED CIRCUITS

Article (1)

This law shall be known as “The Protection of Layout- Designs Of The Integrated Circuits Law for the year 1999” and shall come into force a month after the date of its publishing in the Official Gazette.

Article (2) DEFINITIONS

The following words and phrases shall have the following meanings hereunder whenever used in this law unless there is an indication otherwise.

The Ministry	: The Ministry of Industry and Trade.
The Minister	: The Minister of Industry and Trade.
The Register	: The Register of layout- Designs of Integrated
Circuits.	
The Registrar	: The Registrar of layout-Designs of Integrated Circuits, appointed by the Minister to perform the duties assigned to him by this law and the regulations issued in accordance to it.
Integrated Circuit	: A product, whether in its final form or intermediate form, that performs an electronic function, and which is composed of a group of elements that are interconnected to each other, provided that at least one of those elements is an active element, and that those elements and some or all of the interconnections between the elements are integrally formed in and/or on a piece of material.
Layout-Design	: The three-dimensional disposition, however expressed, of the elements (one of which at least is an active element), and of some or all of the interconnections between the elements, or it is the three-dimensional disposition prepared exclusively for the manufacturing of an integrated circuit.
Protected Layout-Design:	A layout-design that has satisfied all the protection requirements provided for in this law.
Right Holder	: The creator of a layout-design or his legal successors.

Article (3) SUBJECT OF PROTECTION

A – An original layout-design that is registered in accordance with this law shall enjoy protection in the Kingdom. A layout-design is original if it is the result of an intellectual effort by the creator and not familiar to creators of layout-designs and manufacturers of integrated circuits at the time of its creation.

B - A layout-design that is composed of a combination of elements and interconnections that are familiar shall be protected only if this combination, as a whole, satisfies the originality requirements stated in paragraph (A) of this Article.

Article (4) EXCLUSIVE RIGHTS

A- Registration of a layout-design entitles the Right-holder in the layout-design the right to permit or prevent any person who had not obtained his approval from doing any of the following acts:

1. Copying the protected layout design, wholly or partially, whether by merging it into an integrated circuit or otherwise.
2. Importing, selling or otherwise distributing for commercial purposes a protected layout-design or an integrated circuit into which a protected layout-design is merged, or any product in which such an integrated circuit continuously containing an illegally copied layout-design is merged.

B- The rights to a layout design created by more than one person shall be shared by all of them equally, unless they agreed otherwise in writing.

C- Where a layout-design is created in execution of an employment contract, the right to registration of the layout-design shall be to the employer in the absence of contractual provision to the contrary.

Article (5) TRANSFER OF RIGHTS

A - An assignment or transfer of rights to a layout-design shall be valid among parties if reflected in a written agreement signed by the right holder or by his duly authorised agent, and shall only be valid proof against others after being registered according to the conditions and procedures provided by the regulations.

B -
1. The right to a layout-design, as a whole or in part, may be subject to transfer with or without consideration, mortgage or seizure.

2. The right to a layout-design and all related rights and privileges may be inherited.

C - The procedures of transfer, mortgage and seizure of the right in a layout-design, together with all related legal acts, are determined in instructions issued by the Minister for this purpose and published in the Official Gazette.

Article (6) THE REGISTER

A- A Register named the “Layout-Designs Register “ shall be kept at the Ministry, under the supervision of the Registrar, in which records shall be maintained of all the data related to the layout-design, names of owners, addresses and the certificate issued thereto, and any changes to the layout design of the following:

- 1- Any assignment or transfer of ownership or license to use the layout-design granted by the right holder to others taking into consideration the provisions of confidentiality in the license contract.
- 2- The seizure or mortgage placed upon the layout-design or any restriction on the use of the layout-design.

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- B- The Register shall be available to the public in accordance with the instructions issued by the Minister for this purpose and published in the Official Gazette.
 - C- It is permissible to use computers for registering layout-designs and data related thereto. Such data and documents retrieved therefrom and certified by the Registrar, shall be considered as valid proof against others.

Article (7) CONDITIONS OF REGISTRATION

A Right holder may file an application for registration of a layout-design if the following two conditions are met:

- A- The layout-design meets the conditions of originality contained in Article (3).
- B- The application is submitted within two years from the date of first commercial exploitation anywhere in the world.

Article (8) APPLICATION FOR REGISTRATION

An application for registration of a layout-design shall relate to only one layout-design, and shall include the information, material samples, drawings and any other thing prescribed by the regulation.

Article (9) INSECTION AND REGISTRATION

- A- Promptly upon receipt of an application for registration, the Registrar shall inspect the application to verify that the application is complete and that is accompanied by the required fees.
- B- Upon such verification under the previous paragraph, the Registrar shall register the layout-design in the register and shall issue the right holder a Certificate of Registration. The effective date of protection shall be the date on which the application was filed in the Kingdom.
- C- The Registrar may require the applicant to modify the application, complete the data therein, or pay the fees, all prescribed in this law and the regulation issued in accordance to it, provided that those modifications do not exceed what the applicant disclosed in the original application. If the applicant did not what the Registrar required within the period determined in the regulation, the Registrar shall issue a decision rendering the applicant abandoning his application. The applicant may appeal this decision to the Higher Court of Justice within ninety days of being notified of the Registrar's decision.

Article (10) PERIOD OF PROTECTION

The period of protection for a registered layout-design shall be ten years starting from the date of first commercial exploitation of the layout-design anywhere in the world. However, the period of protection shall not last longer than fifteen years following the creation of the layout-design.

Article (11) INVALIDITY

- A – Any party with an interest may file an application to invalidate a registered layout-design to the Registrar or directly to the Higher Court of Justice if:
- 1- If it turns out that the layout-design is unregistrable under Article (7) of this Law at the time of registration.
 - 2- The application for the registration did not include all the information, or it turns out that the submitted documents contradict the facts or the law, or included incorrect material information.
- B - The Registrar's decision may be appealed within ninety days from the date of notification.

Article (12) INFRINGEMENT

Any person who, without the consent of the right holder, performs any act referred to in Article (4/a), with respect to a protected layout-design, is guilty of infringement.

Article (13) EXCEPTIONS

Notwithstanding Article (12), it is not an infringement of the rights to a protected layout-design for any person, without the consent of the right holder, to do the following:

- One-** To perform the act of copying referred to in Article (4/a/1), when that act is performed for the sole purpose of evaluation, analysis, research or teaching or for private purposes only.
- Two-** To perform the act of copying referred to in Article (4/a/1), where that copy relates only to a part of the protected layout-design which does not meet the requirements of originality stated to in Article (3).
- Three-** To perform any act referred to in Article (4/a) in respect of another layout-design that is original according to Article (3) and that is created on the basis of evaluation or analysis as mentioned to in paragraph (a) above.
- Four-** To perform any act referred to in Article (4/a) in respect of another identical and original layout-design that was independently created.
- Five-** To perform any act referred to in Article (4/a/2) in respect of a layout-design, or in respect of an integrated circuit in which such a layout-design is merged, that has been offered in market by, or with the approval of, the right holder.

Article (14) exceptions for innocent infringement

- One-** Notwithstanding Article (12), it is not considered infringement to perform any of the acts referred to in Article (4/a/2) in respect of an integrated circuit merging an illegally copied layout-design, or any product merged in which such an integrated circuit, where the person performing or ordering such acts did not know and had no reasonable grounds to know, when acquiring the integrated circuit or article merged in which such an integrated circuit, that it had an unlawfully copied layout-design merged within it.

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- Two-** After the time that such person has received notice declaring the layout-design as unlawfully copied, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout-design.

Article (15) provisional measures

- 1st. The Right holder having a layout-design registered in the Kingdom when filing a civil or criminal lawsuit or during the hearings, may request the court for the following provided that attached to his attached with a bank or monetary guaranty accepted by the court:
1. Prevent the infringement.
 2. A provisional seizure on the products subject of infringement wherever found.
 3. Preserve the pieces of evidence related to the infringement.
- 2nd. The Right holder alleging infringement upon his layout-design may, prior to filing a civil lawsuit, or during its course request the court to take any of the measures provided for in paragraph (A) of this Article without notifying the counter-party if he proved that he is the Right holder and that his rights had been infringed or such infringement is imminent and there is a possibility to cause damages of irreparable harm, or where there is a demonstrable risk of evidence being destroyed or disappeared, provided that such requests are attached with a bank or monetary guaranty accepted by the court. The counter-party may appeal this decision within eight days of notification or acknowledgement, and the decision of the court of appeal in this regard shall be final.
- 3rd. If the Right-holder fails to file the case within eight days from the date the court approved his request, all measures taken in this regard shall be invalidated.
- 4th. The counter-party or the defendant may claim just compensation if the end-result of the lawsuit proved that the plaintiff's claims are invalid, or if the plaintiff failed to file a lawsuit within the specified period.
- 5th. The Court may order seizure of the products, tools, and main materials used in the manufacturing of these products or the materials used for committing the infringement, or the ones that resulted in the infringement. The Court may also order its destruction or its use for non-commercial purposes.

Article (16) Obligatory Licensing

The Minister may grant licenses for exploitation of a layout-design to others than the Right-holder and without his consent in any of the following cases:

1. If the use by related government departments or third parties who are licensed to use the layout-design is for national defence, emergency situations, or other circumstances of extreme urgency or

for non-commercial public benefit, provided that the Right-holder shall be notified whenever possible. This shall be upon issuance of an administrative or judicial decree.

2. If the Right-holder practices his rights in a manner to deter third parties from fair competition.

Article (17)

The following should be taken into account upon issuing licenses:

1. The request for license to exploit should be studied in accordance with the conditions of such request, and for each request separately.
2. The scope and duration of the license to exploit it shall be limited to the purpose for which it was approved. In the case of semi-conductor technology, a license shall only be granted for the public non-commercial use or to remedy practices established by judicial or administrative departments to be practices that restrict competition.
3. The license to exploit a layout-design shall not be exclusive to whom it was granted.
4. The license shall not transferred to others.
5. Granting the license shall be to meet the national market needs, in other cases than that provided in paragraph 2 of Article 16 of this Law
6. The Layout-design applicant shall be equitably) compensated in light of the economic value of the layout-design.

Article (18)

The Minister may, upon his discretion or upon request of the Right -holder, cancel the license if the reasons for which it was given to the right holder no longer exist and it is very probable that they will not exist again, without prejudice to the related rights of others having interest in the license.

Article (19)

The special procedures for licensing to exploit a layout-design will be determined in accordance to the regulation.

Article (20)

Any decision issued by the Minister in relation to obligatory licensing may be appealed at the Higher Court of Justice within ninety days from the date of notification.

Article (21) Closing Provisions

1. Nothing in this Law shall affect any right granted by or under any other Law.

2. The Council of Ministers shall issue the regulations to apply this Law including the fees required.

Article (22)

The Prime Minister and the Ministers are responsible for the enforcement of this Law.

ANNEX 14

Comments on Final English Translation of the Draft Law for the Protection of Layout-Designs Of Integrated Circuits

26/8/99

The following are my comments on the Draft Integrated Circuits Law. Most comments concern questions of translation.

1. Article 3: Article 3(A) and (B) uses the term “familiar”. Previous translation have used the term “commonplace”, which is the term used in TRIPs and the Washington Treaty. As a chip engineer can be “familiar” with a layout-design that is still not “commonplace” and therefore protectable in accordance with TRIPs, I think the appropriate term (in Arabic as well as in English) should be “commonplace.”
2. Article 4: Article 4(A) (as well as Articles 13 and 14 and probably others that I did not catch) uses the term “merge”. TRIPs, Washington, and previous translations use the term “incorporate”, as in “embody”. “Incorporate” is a much more accurate term and should be used, if possible, in both the Arabic and English texts.
3. Articles 5 and 6: These articles use the term “seizure”, which might make sense in Arabic, but is confusing in English. Earlier translations used the terms “custody” and “attachment”.
4. Article 9(C): The intent of this article is to allow the Registrar to request the applicant to amend the application if the application is not complete. I think language to the effect that, “If the Registrar determines that the application is incomplete or that the fee has not been paid, he may...” should be added, as existed in previous translations. In addition, the word “do” is missing in the second sentence (“If the applicant did not do what the registrar required...”).
5. Article 15: The enforcement deficiencies that plague the other laws are present in these provisions as well.
6. Article 16: The obligatory licensing provisions are apparently the same as in the patent law and may give rise to some problems. In Article 16(A) (or 16(1)), a license may not be granted upon issuance of an administrative or judicial decree. I think that same provision should be added to Article 16(B) (or 16(2)).
7. Article 18: The last phrase of this article (“without prejudice to the...”) comes from TRIPs Article 31(g), which states, “subject to adequate protection of the legitimate interests of the persons so authorized.” The intent of this phrase is to ensure that the legitimate interests of licensees are taken into account and adequately protected. I don’t believe that the final phrase of Article 18 contains the same meaning. For one thing, it seems to protect the rights of anyone having an interest in the license, not just the licensees. This morning, Samer, Yasera, and Maher indicated that the phrase could be translated as, “without prejudice to the rights of others related to the license”. That translation is an improvement, but the closer the text can come to the intent of TRIPs, the better.

I have no other comments and, overall, think the text is a very good one.

ANNEX 15

Draft Integrated Circuits Law

Article 16. Obligatory Licensing

- A. In extraordinary circumstances and after careful consideration on its individual merits, the Minister may, upon recommendation of the Registrar, grant a license for the use by the government or by third parties authorized by the government of a layout-design without the consent of the right-holder in the following cases:
1. For public non-commercial use;
 2. To remedy a practice determined after judicial [or administrative] process to be anti-competitive.
- B. The following shall be taken into account in granting such a license under this Article:
1. Efforts have been made to obtain authorization from the right-holder on reasonable terms and conditions and such efforts have not been successful within a reasonable period of time;²³
 2. The license shall be non-exclusive and non-assignable;
 3. The scope and duration of the license shall be limited to the purpose for which it was authorized;
 4. The license shall be granted to meet the needs of the national market.
- C. Subject to adequate protection for the legitimate interests of the licensee, a license granted under this Article shall be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The [Minister] shall have the authority to review, upon written request accompanied by reasons, the continued existence and unlikeliness of recurrence of those circumstances.
- D. The right-holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the of the license and, in the case of a license granted under paragraph (A)(2), the need to correct anti-competitive practices.
- E. The legal validity of any decision relating to the grant of a license under this Article or to the remuneration provided in respect of such license shall be subject to appeal to the High Court of Justice.
- F. The By-laws shall provide the procedures for the grant of license under this Article.

²³ This provision is not actually required in the case of either public non-commercial use or anti-competitive practices. I nevertheless think it is advisable to provide protection that is TRIPs + in this case.

ANNEX 16

REVISED Provisions that Should be Included in the By-Laws

In drafting the By-Laws for the Integrated Circuit Topography Law, the following provisions should be included:

1. Application for Registration

In accordance with Article 7 of the Law, an application for registration of a topography shall include the following:

1. the name and address of the applicant;
2. a statement identifying the applicant's legal interest in the topography;
3. a title or titles identifying the topography;
4. a copy or drawing of the topography, along with information defining the electronic function which the integrated circuit is intended to perform. Parts of the copy or drawing which relate to the manner of manufacture of the integrated circuit may be excluded, provided that the parts submitted are sufficient to permit identification of the topography;
5. the date of creation of the topography,
6. the date and place of the first commercial exploitation of the topography;
7. a fee in the amount of JD _____; and
8. such other information or material as the Minister may duly prescribe.

2. Register and Certificate of Registration

In accordance with Article 8 of the Law, the following information shall be included in the Register and on the Certificate of Registration..

1. the name and address of the applicant;
2. the applicant's legal interest in the topography;
3. the title or titles of the topography;
4. the effective date of registration;
5. the date of expiration of the registration; and
6. such other information as the Minister may duly prescribe.

3. Corrections

In accordance with Article 8 of the Law:

1. in order to correct any clerical error in the Register, or to reflect any change in the information entered in the Register, the Registrar may, at his own impetus or at the request of the holder of the Certificate or Registration, amend an entry in the Register.
2. in order to correct any clerical error in a Certificate of Registration, the Registrar may, at his own impetus or at the request of the holder of the certificate, amend the Certificate of Registration or issue a corrected certificate.

4. Failure to Issue Certificate of Registration

The time period provided for in Article 11(2) of the Law shall be [four months after a completed application has been filed and the required fee paid].

5. Public Inspection and Copying

In accordance with Article 5 of the Law, public inspection and copying of applications for registration and related materials may take place on the following conditions: [to be completed in accordance with Jordanian practice].

ANNEX 17

My Draft of Geographical Indications Provisions (without registration, adhering very closely to TRIPs, and borrowing wherever possible from Polly's draft):

1. Definitions

The following terms, as used in (this law) (these provisions) shall mean as follows:

Geographical Indication: An indication that identifies a good as originating in a particular territory, or a region or locality of that territory, where a given to its geographical origin¹.

2. Prohibited Acts

The following shall be prohibited in respect of geographical indications and shall be subject to the remedies (in --- of the Trademarks Law) (in Article ---, below):

- A. The use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which mislead the public as to the geographical origin of the good².
- B. Any use of a geographical indication which constitutes an act of competition contrary to honest practices in industrial or commercial matters, including, in particular, the following³.
 - 1. Any act of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities of a competitor⁴;
 - 2. Any false allegation in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities of a competitor⁵;
 - 3. Any indication or allegation the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods⁶;
- C. Any use of a geographical indication as provide in A. and B., above, which although literally true as to the territory, region, or locality in which the goods originate, falsely represents to the public that the goods originate in another

¹ Article 22 (1)

² Article 22 (2)(a)

³ Article 22 (2)(b) and Paris Article 10bis(2).

⁴ Paris. Article 10bis (3)(1)

⁵ Paris. Article 10bis(3)(2)

⁶ Paris. Article 10bis (3)(3)

territory⁷. The geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like⁸.

- D. Any use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated. In the case of homonymous geographical indications for wines, protection against prohibited use shall be accorded to each indication, subject to paragraph C., above. In such latter case, the (Minister)(Director) (Court?) shall determine, if he or she deems it necessary (if deemed necessary), the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled⁹.

3. Relationship to Trademark Registration

Either ex officio or at the request of an interested party:

- A. The registration of a trademark shall be refused or invalidated if such trademark contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in the Kingdom is of such a nature as to mislead the public as to the true place of origin¹⁰.
- B. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines shall be refused or invalidated with respect to such wines not having this origin¹¹.

4. Exceptions

Notwithstanding the provisions of Article 2 or 3, above (or any other applicable provisions of Jordanian Law):

- A. Eligibility for or the validity of the registration of a trademark, or the right to use a trademark, shall not be prejudiced on the basis that such a trademark is identical with, or similar to, a geographical indication, where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:
1. Before (the date of application of the TRIPs Agreement to the Kingdom), or
 2. Before the geographical indication is protected in its country of origin¹².

⁷ Article 22(4)

⁸ Article 23(1). Note that the footnote to this article states that “Members may, with respect to these obligations... provide for enforcement by administrative action.” If having special provisions on wine and spirits is offensive or contrary to Jordanian practice, perhaps they can be put in by-laws, provided that enforcement is adequate and effective.

⁹ Article 23(3). See footnote 8.

¹⁰ Article 22(3). Note that this provision may not be necessary if it already exists in the Trademarks Law.

¹¹ Article 23(2). See footnote 10.

¹² Article 24(5). See footnote 10

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- B. Use shall be permitted of a geographical indication of any other WTO Member with respect to:
1. Goods or service for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the kingdom.
- C. Any request in connection with the use or registration of a trademark made on the basis of adverse use of a geographical indication must be presented within five years after the adverse use of the protected indication has become generally known in the kingdom, or within five years after the date of registration of the trademark in the kingdom, whichever date is earlier, provided that the geographical indication is not used or registered in bad faith¹³.
- D. The right of any person to use, in the course of trade, his or her name or the name of his or her predecessor in business shall not be prejudiced, except where such name is used in such a manner as to mislead the public¹⁴.
- E. The use of geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country, shall not be prohibited¹⁴.

¹³ Article 24(7). See footnote 10

¹⁴ Article 24(8)

¹⁴ Article 24(9)

ANNEX 18

7/29/1999

REVISED Draft Geographical Indications Provisions

1. Definitions

The following term, as used in these provisions, shall mean as follows:

Geographical Indication: An indication that identifies a good or product as originating in a particular territory, or a region or locality of that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

2. Prohibited Acts

The following shall be prohibited in respect of geographical indications and shall be subject to the remedies provided in Article 5, below:

- A.** The use of any means in the designation or presentation of a good or product that indicates or suggests that the good or product in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good or product;
- B.** Any use of a geographical indication which constitutes an act of competition contrary to honest practices in industrial or commercial matters, including, in particular, the following:
 - 1. Any act of such a nature as to create confusion by any means whatever with the establishment, the goods or products, or the industrial or commercial activities of a competitor;
 - 2. Any false allegation in the course of trade of such a nature as to discredit the establishment, the goods or products, or the industrial or commercial activities of a competitor;
 - 3. Any indication or allegation the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity of the goods or products;
- C.** Any use of a geographical indication as provided in A. and B., above, which, although literally true as to the territory, region, or locality in which the goods or products originate, falsely represents to the public that the goods or products originate in another territory, or the geographical indication is used in translation or accompanied by expressions such as “kind”, “type”, “style”, “imitation”, or the like.

3. Relationship to Trademark Registration

Either *ex officio* or at the request of an interested party, and in accordance with the provisions of the Trademarks Law, the registration of a trademark shall be refused or invalidated if such trademark contains or consists of a geographical indication with respect to goods or products not originating in the territory indicated. if use of the indication in the trademark for such goods or products in the Kingdom is of such a nature as to mislead the public as to the true place of origin.

4. Exceptions

Notwithstanding the provisions of Articles 2 or 3, above:

- A.** Eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, shall not be prejudiced on the basis that such a trademark is identical with, or similar to, a geographical indication, where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:
 - 1. Before [the date of application of the TRIPs Agreement to the Kingdom], or
 - 2. Before the geographical indication is protected in its country of origin.
- B.** Use shall be permitted of a geographical indication with respect to goods, products, or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the Kingdom.
- C.** Any request in connection with the use or registration of a trademark made on the basis of adverse use of a geographical indication must be presented within five years after the adverse use of the protected indication has become generally known in the Kingdom, or within five years after the date of registration of the trademark in the Kingdom, whichever date is earlier, provided that the geographical indication is not used or registered in bad faith.
- D.** The right of any person to use, in the course of trade, his or her name or the name of his or her predecessor in business shall not be prejudiced, except where such name is used in such a manner as to mislead the public.
- E.** The use of geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country, shall not be prohibited.

5. Remedies [NOTE: These provisions need to be drafted.]

ANNEX 19

Comments on the Draft Industrial Designs and Models Law No. () for the Year 1999

Jay Erstling

This memorandum contains comments on Jordan's Draft Industrial Designs and Models Law. The comments are of two kinds: those that deal with conformity with TRIPs and the Paris Convention; and those deal with non-TRIPs-related issues.

I. Comments on TRIPs and Paris Convention Conformity

1. As originally envisioned, the law was apparently to have included provisions on the grant of utility certificates, but such provisions do not appear in the published draft. Because neither TRIPs nor the Paris Convention requires countries to enact special utility certificate [utility model] legislation, the failure to include such provisions does not present a WTO-compliance problem.
2. Article 3: To be registrable according to this provision, an industrial design must be "inventive" in addition to being "new" and "independently created". TRIPs Article 25 provides that industrial designs shall be protected if they are "new or original". Since "inventive" is a higher standard than originality, Article 3 exceeds the terms of TRIPs and should be deleted. In view of the fact that Article 3(2) ignores the term "inventive" and defines only the term "new", deleting the requirement of inventiveness will have no practical impact on the law.
3. Article 5(D): This provision deals with claiming a right of priority under Article 4 of the Paris Convention, and might be interpreted as unduly restricting the scope of that article. Paris Article 4(A)(2) states that "any filing equivalent to a regular national filing" shall give rise to a right of priority, and therefore includes regional filings or international deposits under the Hague Agreement made at WIPO headquarters in Switzerland. Because Article 5(D) of the draft law states that priority shall be granted "provided that the filing takes place within six months from the filing date at that State", the law can be interpreted to exclude any filings made outside the country of origin. The provision should be made more precise with language such as the following: "An application for the registration of an industrial design or model may claim a right of priority under the Paris Convention on the basis of an earlier application that was filed abroad in any State party to a bilateral or multilateral treaty for the protection of industrial property to which Jordan is party, or on the basis of an earlier regional application or international deposit originating from such a State, provided that the filing in Jordan takes place within six months from the earlier filing date."
4. Article 5(D) also states that the applicant must submit a "document proving the right of priority...." To conform more precisely to the terms of Paris Article 4(D), the provision should clearly require the applicant to make a declaration indicating the date of the earlier filing and the country in which it was made and/or to submit

a copy of the earlier application or international deposit certified as correct by the office with which it was made.

5. Article 8: TRIPs Article 26(2) permits States to provide limited exceptions to the protection of industrial designs. Jordan should therefore consider whether it wishes to take advantage of this possibility. One exception, in particular, that Jordan might wish to adopt relates to exhaustion of rights and would provide that, “The rights to sell or import conferred by registration shall not extend to acts in respect of articles which have been put on the market in the Kingdom by or with the consent of the registered owner.”

To be fully consistent with TRIPs Article 26(1), the words “of the protected design” should be added after the phrase, “or substantially a copy,”.

6. Article 10: This provision deals with the grant of temporary protection as required by Article 11 of the Paris Convention. While the provision states that the procedures regulating the grant of temporary protection are to be specified in the regulations, it nowhere expressly states that temporary protection will be granted.
7. Article 19: This article deals with provisional measures and other penalties and contains the same deficiencies as those contained in all the other intellectual property laws.
8. Other: The draft law does not provide for the renewal of an industrial design registration (renewal is not required by TRIPs provided the duration or protection is at least ten years). If Jordan chooses to provide for renewal, however (see 7, below), it will, in accordance with Paris Article 5bis, be required to allow a grace period of six months for the late payment of any renewal fee on payment of a surcharge.

II. Comments on Non-TRIPs-Related Issues

1. The law refers to “industrial designs and models”. In English, the term that is used is simply “industrial designs” because a design, in English, can be both two-dimensional and three-dimensional. In French, on the other hand, a design can only be two-dimensional, while a model is three-dimensional (which is why, in French, the term is *dessin* [design] or *modèle* [model]). If in Arabic, as in English, the term design encompasses three dimensions, then the law should refer only to “industrial designs”.
2. Article 2: The definition of industrial design omits certain elements and unnecessarily adds others. The definition should include any composition or arrangement of “colors” as well as lines, should make clear that the design must be appealing “to the eye”, and should add that a design can also serve as a pattern for a product. In addition, it is more appropriate to speak of a product “of industry or handicraft” rather than one resulting from machine or manual use. The definition also includes a requirement that an industrial design must be able to distinguish one product from another. This is a trademark standard that is

arguably higher than that required for industrial designs and therefore should be deleted.

The definition of an industrial model will need to be combined with that of an industrial design if it is determined that the former term should be subsumed in the latter. In such case, “shapes” or “three-dimensional forms” will have to be added to the definition. If Arabic requires that both terms be maintained, then the definitions of industrial design and industrial model will have to be made parallel. As currently drafted, the definitions differ considerably from one another.

3. Article 3: Article 3(B) of the draft law adopts a very high standard for the registration of an industrial design. While the provision is not objectionable and requires no modification, it should be acknowledged that it nevertheless exceeds the requirements of TRIPs. According to TRIPs Article 25, an industrial design may be deemed to be new or original if it significantly differs from known designs or combinations of known design features.

Article 3(C) deals with aspects of an industrial design that are not entitled to protection. As written, the provision is rather cumbersome and difficult to understand. The standard that is ordinarily employed is that protection does not apply to elements of an industrial design that are dictated solely [or essentially] by technical or functional considerations (or where the elements serve solely to obtain a technical result and to the extent they leave no freedom as regards arbitrary features of appearance).

4. Article 4: Given Jordan’s desire to respect moral rights, it might wish to consider adding a provision to this article stating that the creator of an industrial design shall be named as such in the registration, unless the creator submits a signed declaration to the Registrar stating that he does not wish to be so named.
5. Article 5: In this article and throughout the law, reference must consistently be made both to designs and models, which is not always the case (assuming, that is, that both terms will be retained). Article 5(B) contains an exception, however. Since that provision deals only with two-dimensional designs, the reference to industrial model should be deleted.

Although it is probably presumed, consideration should be given to adding a provision permitting an applicant to withdraw his application. In addition, in Article 5(C), reference is made to the term “class”, but it is not apparent that this refers to the International Classification of Industrial Designs under the Locarno Agreement. The term should therefore be clarified.

6. Article 7: This article adopts a registration system based on opposition. However, it also requires the Registrar to carry out a substantive examination. In my opinion, the law should adopt one system or the other, but it is unnecessary and unduly burdensome to require both. Assuming that Jordan opts to maintain a system of opposition, then the reference to Articles 3 and 4 should be deleted (in any event, these references appear to be incorrect; the appropriate references, I think, should be to the definitions of industrial design and model in Article 2, and

to Article 3). Instead, the Registrar's examination should be to ensure that the provisions of Articles 5 and 6(A) are met.

In Article 7(B), the Registrar must publish the industrial design in addition to announcing the acceptance of the application in order to allow opposition properly to take place.

7. Article 9: Although TRIPs only requires a minimum of 10 years' protection, many countries provide for the renewal of an industrial design registration, typically for two additional periods of five years each, upon payment of a renewal fee. The US allows one term of fourteen years counted from the date of grant.
8. Article 11: Although it may be presumed in the law, consideration should be given to adding a provision that an invalidated registration shall be considered null and void *ab initio*.

Although probably unnecessary since it may also be presumed, there is no provision permitting the voluntary surrender of a registration.

9. Article 16: Article 16(A) specifies the matters that need to be recorded in the Register. It should be made clear with language such as "including the following" or "in particular the following" that the list of items is not exhaustive.

Article 10(B) permits the public to consult the Register but does not permit the public to obtain extracts from the Register where appropriate.

Article 10(C) commits Jordan to permitting computerized registration. While this is an excellent provision, the country will need to have a computerized system up and running by the time the law enters into force if it does not have such a system in place already.

No additional changes, in my opinion, need to be considered.

Intellectual Property

Products of the Mind

**Protected through the grant of
*exclusive rights***

Why Protect Intellectual Property?

Rewards Creators

Encourages Public Disclosure

Helps Consumers

Promotes Fair Competition

Helps Transfer Knowledge

Why the focus on intellectual property?

**Increased cost of technological
innovation**

Decreased cost of copying

Increased global competition

Copyright

Protection Granted to:

Literary and

Artistic Works

World Trade Organization

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

*** * ***

World Intellectual Property Organization

Berne Convention for the Protection of
Literary and Artistic Works

Protected By Copyright:

Computer Programs (Software)

CD Roms

Audiocassettes

Videocassettes

Databases

“Neighboring Rights”

Protection of:

Performers

Sound Recordings

Broadcasting Organizations

Intellectual Property

**Industrial Property
(Patents, Trademarks, Industrial
Designs)
Integrated Circuit Protection
Copyright**

World Trade Organization:

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

World Intellectual Property Organization:

Washington Treaty on Intellectual Property in Respect of Integrated Circuits

(Some provisions excluded!)

Integrated Circuits

Protection Granted to:

Layout-Designs

(the three-dimensional disposition of an
integrated circuit)

Integrated Circuits and

Articles Incorporating Integrated Circuits

Exclusive Rights:

Reproducing

Importing

Selling

Distributing

Enforcement:

Provisional Measures

Injunctions

Seizure

Damages

Criminal Penalties